

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LANEKO ENGINEERING CO., INC.

and

MACHINE TOOL & DIE LOCAL NO. 155
OF THE UNITED ELECTRICAL, RADIO
AND MACHINE WORKERS OF AMERICA

Cases 4-CA-31660
4-CA-31779, and
4-CA-32304

Jennifer Spector, Esq., and *Scott C. Thompson, Esq.*,
for the General Counsel.
Robert C. Nagle, Esq. and *Wayne E. Pinkstone, Esq.*
(Harvey, Pennington, Cabot, Griffith & Renneisen, Ltd.),
of Philadelphia, Pennsylvania, for the Respondent.
Rachel Rosen, Esq., for the Charging Party.

DECISION

Statement of the Case

JOSEPH GONTRAM, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on September 9-12, 23 and 24, 2003. In Case 4-CA-31660, the charge was filed by Machine Tool & Die Local 155 of the United Electrical, Radio and Machine Workers of America (the Union) on October 15, 2002, and an amended charge was filed on April 17, 2003. In Case 4-CA-31779, the charge was filed by the Union on December 6, 2002, and an amended charge was filed on April 17, 2003. In Case 4-CA-32304, the charge was filed by the Union on July 21, 2003, and an amended charge was filed on August 28, 2003. After the filing of complaints, the cases were consolidated. The consolidated complaint was amended twice before the hearing, again at the start of the hearing, and again at the conclusion of the hearing.

The consolidated complaints allege that Laneko Engineering Co., Inc. (the Respondent): (1) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by requiring or coercing employees, who had been on strike, to sign petitions denouncing the Union as a condition of returning to work, by circulating those petitions among the Respondent's employees in order to coercively obtain the employees' signatures, and by telling certain employees they were not welcome to return to work because of their union activity and their refusal to sign the petition; (2) violated Section 8(a)(1) by making threats regarding the futility of union activity; (3) violated Section 8(a)(1) by requesting employees to provide the Respondent with copies of affidavits the employees had executed during the Board's investigation of the charges herein; (4) violated Section 8(a)(1) by creating the impression of surveillance of its employees' union activities; (5) violated Section 8(a)(1) by promising benefits to an employee in exchange for favorable testimony at the hearing in this case; (6) violated Section 8(a)(1) and (3) by refusing to reinstate four workers because of their union activities and because of their failure to sign the petitions; (7) violated Section 8(a)(1) and (2) by assisting in the creation and maintenance of a labor organization; and (8) violated Section 8(a)(1) and (5) by refusing to bargain collectively with the

exclusive bargaining representative of the Respondent's employees.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the briefs and reply briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, designs and manufactures tools and dies at its facilities in Fort Washington and Montgomeryville, Pennsylvania, where it annually purchases and receives goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Respondent, a family-owned business, is a tool and die manufacturer with plants in Fort Washington, Montgomeryville, and Limerick, Pennsylvania. The Limerick plant is not involved in this proceeding. W. James Derrah, Sr., is the majority shareholder, and his two sons, James, Jr. and Steven, are minority shareholders. The Union has represented the Respondent's production and maintenance employees for approximately 40 years, except for a brief period when another union represented the Montgomeryville employees. The Respondent has negotiated a series of collective bargaining agreements with the Union regarding the employees at the Montgomeryville and Fort Washington plants, the latest expiring on September 30, 2002.

James Derrah, Sr. has been the president of the Respondent since 1984 and its owner since 1991. At the time of the events in this case, Steven Derrah was the plant engineer at Fort Washington, and he was in training to become the plant manager. James Derrah, Jr. was the sales manager at Fort Washington. Dominic Savoca was the plant manager at Fort Washington, although he was in the process of removing himself because of disability. Phil Savoca, Dominic's brother, was the plant manager at Montgomeryville. Denise Waller was the Human Resource Administrator and the Payroll and Benefits Administrator. In the Fort Washington plant, Robert Taunt was a tooling supervisor, Daniel Kenney was a day shift supervisor, and Richard Johnson was a night shift supervisor.

Employees of the Respondent and bargaining unit members include, in Fort Washington, Eric Shubert, press operator; Edward Mower, shipper; Junior Castillo, machine operator; Luis Castillo, operator; Antonio Castillo, machine operator; Robert Miller, press operator; Werner Dangelmaier, tool and die maker; Geoffrey Olson,² inspector; Frank Taubenkraut, machine operator; William Hunt, inspector; John Klatcher, tool maker; Joseph Sebzda, shipper; Steven Jaeger, die setter; David Hysek, tool and die maker; and Maxwell Baughman, maintenance machinist. In Montgomeryville, employees and bargaining unit

¹ The General Counsel's unopposed motion to correct the transcript is granted.

² Although the court reporter spells the witness's name as Jeffrey, the parties spell the name as Geoffrey. Accordingly, the latter spelling is used.

members include Albert Daniels, machinist; Harry Schemaitat, machine operator; and Florian Kempf, inspector.

The Respondent and the Union began negotiations for a new contract in early September 2002. The Respondent's bargaining committee included Derrah Sr., Derrah Jr., Steven Derrah, and Dominic Savoca. Eric Shubert, a bargaining unit employee and a Union shop steward, was a member of the Union's bargaining committee. During the negotiating sessions, Shubert and Derrah Sr. engaged in a heated exchange after Shubert challenged Derrah Sr.'s complaint of financial inability to meet the Union's contract demands with a reference to funds available to Derrah Sr. from his other businesses. Derrah Sr. stated that he did not want Shubert in the negotiating sessions, but Shubert replied, "You're stuck with me." (Tr. 298.)³

On September 30, the union members held a meeting at the Fort Washington plant. Despite the presence of management, employees Shubert, Edward Mower, and Werner Dangelmaier spoke up in favor of the Union. Mower had previously been both a shop steward and a member of the bargaining committee. The union members rejected the Respondent's final offer and voted to strike. The union members remained on strike from October 1 to 7, 2002.⁴

B. The strike

The union members went on strike at 12:01 a.m. on October 1, and remained on strike until the morning of Monday, October 7. During the strike, the workers picketed both plants in 4-hour shifts. The Respondent employed temporary workers to keep the plants in operation during the strike.

Phil Savoca occasionally came out of the Montgomeryville plant to speak to the employees on the picket line. On the first or second day of the strike, Savoca spoke to employee Albert Daniels while Daniels was on the picket line. Savoca told Daniels that the employees should consider dropping the Union because the Union's demands would put the Respondent out of business, and the Union was determined to put the Respondent out of business. On another occasion, Savoca told picketing employees at Montgomeryville, including Harry Schemaitat, a machine operator, that they could cross the picket line, but if they did so they would have to renounce the Union.⁵ And, on another occasion, Savoca told Harry Schemaitat that in order to come back to work, he would have to sign a paper renouncing the Union.

³ References to the transcript of the hearing are designated as Tr.

⁴ All dates are in 2002 unless otherwise indicated.

⁵ All facts found here are based on the record as a whole and on my observation of the witnesses. The credibility resolutions have been made from a review of the entire testimonial record and exhibits with due regard for logic and probability, the demeanor of the witnesses, and the teaching of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404 (1962). As to those witnesses testifying in contradiction of the findings, their testimony has been discredited, either as having been in conflict with the testimony of reliable witnesses, or because it was incredible and unworthy of belief, or as more fully explained in the text. In determining whether threatening or coercive statements were made by the Respondent, I have also taken into account the economic dependence of employees on their employer, with awareness of an employee's attentiveness to intended implications of his employer's statements, which might be more readily dismissed by a disinterested party. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969); *Mon River Towing, Inc. v. NLRB*, 421 F.2d 1, 9 (3d Cir. 1969).

On the second day of the strike, Richard Johnson, night shift supervisor at the Fort Washington plant, spoke to Shubert while Shubert was on the picket line. Johnson told Shubert that Derrah Sr. said, "The Union ain't never getting back in." (Tr. 299.)

From the beginning of the strike through at least Friday, October 4, Derrah Jr. operated a video camera from his father's office in the Fort Washington plant where he recorded all activity on the picket line that he felt showed misconduct. (GC Exh. 27.) During the Board's investigation of this case, the Respondent represented that the videotape showed misconduct by the picketers, including obstructing third-party vendors and suppliers, a picketer wielding a baseball bat, and another picketer wielding a hammer. The Respondent also made this representation in a position statement it filed with the Board. In fact, the only truth to these allegations is that the videotape does show one picketer, Junior Castillo, a machine operator at the Fort Washington plant, lazily swinging a baseball bat, at no particular person and for no apparent purpose, in the general vicinity of the picket line. However, the Respondent did not regard this baseball bat incident as misconduct because no manager ever disciplined Castillo or took any action or even mentioned the incident to Castillo.

The failure of this videotape to corroborate the Respondent's claim of misconduct helps to explain the Respondent's various misrepresentations during the course of the present proceeding concerning the existence and integrity of the videotape. In a prehearing conference, the Respondent, through counsel, represented that it no longer possessed the videotape. At the start of the hearing, the Respondent represented that a tape did exist, but it had been substantially compromised because much of the tape had been erased or taped over. This second misrepresentation remained uncorrected until Steven Derrah testified and admitted that the videotape did exist and had not been erased or taped over.

The Respondent's counsel claims he unknowingly made these misrepresentations from false information provided to him by Derrah Jr. on behalf of the Respondent. I accept this contention and do not find or intimate that counsel knowingly made these misrepresentations. The same cannot be said for Derrah Jr., who made the tape, or Steven Derrah, who provided the camera and maintained possession of the camera and the tape until the hearing.

Regarding the single and brief instance of Castillo swinging a baseball bat, Castillo claims that he was doing it in conjunction with another picketer who was playing with a tennis racket, and that they were simply playing with these items to pass time during the picketing. In the absence of the videotape and the Respondent's representations about the videotape, this claim could well be found incredible. However, Castillo's actions as reflected on the videotape are consistent with his testimony. Accordingly, Castillo's testimony describing his actions on the picket line is found to be credible.

With respect to the Respondent's contention that Shubert had wielded a hammer in a threatening manner on the picket line, I reject this contention and find such testimony incredible. I credit the testimony of Shubert who denied wielding a hammer in such a manner. Moreover, the videotape, which allegedly shows all strike misconduct, does not show Shubert wielding a hammer. In making this determination, I have also considered the Respondent's representations regarding the existence, integrity, and content of that videotape.

On one occasion, Derrah Sr. came out to talk to the picketers. Employee Robert Miller spoke loudly to Derrah, telling him, "If you'd just try to reason with us and not get these scabs in we could get back together." (Tr. 288.) Derrah Sr. testified that Miller screamed and cursed at him, as did other members of that picket line, including Mower and Dangelmaier. In observing

the demeanor of Miller, Mower, Dangelmaier, and Derrah Sr. on the witness stand, the employees appeared to be more credible witnesses. Moreover, those employees are currently employed by the Respondent, and this circumstance merits additional consideration in assessing credibility. *Flexsteel Industries*, 316 NLRB 745 (1995) (“the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests.”) Finally, the likelihood that these employees actually screamed and cursed at Derrah Sr., the president and owner of the Respondent, is belied by the absence of discipline or even a mention of such alleged misconduct by anyone in management before or after the employees returned to work. Accordingly, the credible evidence shows that these employees, including Miller, Mower, and Dangelmaier, did not scream or curse at Derrah Sr. or otherwise engage in misconduct on the picket line.

In assessing credibility, I have also considered the likelihood that the workplace climate was, at least, somewhat tense during the strike and while the workers were picketing. In such a situation, management could view certain actions, innocent and of no consequence in themselves, as belligerent or threatening. Thus, I have discounted Derrah Sr.’s testimony regarding the conduct of Miller, Mower, and Dangelmaier, as well as Derrah Sr.’s statement that Shubert waved a hammer on the picket line in a threatening manner. Shubert testified that he hung a strike sign on a tree close to the picket line, and he may have used a hammer to do it. Assuming that Shubert did hang this strike sign with a hammer, he did not use the hammer in a threatening manner nor did this action constitute misconduct.

At some point after the start of the strike, Derrah Sr. directed a subordinate to call the police. He did this because of reports that trucks were being prevented from entering the Respondent’s premises. The police arrived and talked to the picketers. The police did not pursue the matter any further, and no citations were issued. In considering all of the foregoing factors, including statements made by the Respondent about the videotape, what the videotape actually shows, the actions and inaction of the police, and the testimony of the participants and witnesses of the picket line, I conclude that the credible evidence demonstrates that the workers did not engage in any misconduct while they picketed the Respondent’s two plants.

On Thursday, October 3, David Hysek, a toolmaker in the Fort Washington plant, telephoned Dominic Savoca. Hysek had been against the strike from the beginning and was becoming more dissatisfied as the strike continued. Hysek and Savoca commiserated and told each other that they were unhappy with the strike and they would both prefer that the workers come back to work. Savoca testified that they also spoke about the possibility of getting rid of the Union. Hysek denied that they spoke about this. With respect to the demeanor of the witnesses, Savoca displayed a lack of credibility even more than Hysek did. This, together with the admonition in *Flexsteel Industries, Inc.*, supra, leads me to credit the testimony of Hysek and to reject the testimony of Savoca regarding this aspect of their conversation. Accordingly, Savoca and Hysek did not discuss the possibility of getting rid of the Union.

During their conversation, Savoca told Hysek, “We need you [the workers] in here, you want to come in, just come in and work.” (Tr. 982, 1111.) Savoca suggested that Hysek and the workers could start at 6:00 a.m. on Monday, October 7. Savoca and Hysek spoke again on Saturday, October 5, and they agreed that Hysek and, if possible, others would cross the picket line on Monday morning, October 7. Nevertheless, Hysek did not represent any other workers and Savoca knew this.

On Saturday, October 5, at a union meeting, employee Maxwell Baughman was selected to replace a departing member on the Union’s bargaining committee. Baughman had

been against the strike from the beginning and was dissatisfied with the Union, but there is no evidence that other workers knew this. Baughman had previously been a shop steward, but had been defeated in the previous election by Shubert, the current shop steward.

5 After the union meeting, Baughman spoke to Derrah Sr. by telephone. Derrah Sr. agreed to take back the workers under the same terms and conditions as existed previously on the condition that they come back without the Union.⁶ However, the deal extended by Derrah Sr. and accepted by Baughman was only good if the workers came back to work early in the morning on Monday. If the workers waited until after the scheduled negotiation meeting between
10 the Union and the Respondent at 4 p.m. on Monday, Derrah Sr. stated that there would be no deal and the only thing he would negotiate would be pay cuts. Baughman told Edward Mower about this deal in a telephone conversation with Mower on Sunday night. He told Mower that the deal was for every worker.

15 News of the deal between Baughman and Derrah Sr. spread quickly amongst the employees. Baughman himself received many calls from workers over that weekend. On Monday morning, October 7, at approximately 5:30 a.m., many workers appeared at both the Montgomeryville and Fort Washington plants.

20 The Respondent argues that the workers at both plants were dissatisfied with the strike and with the Union, and that many or most of the workers no longer wanted to be represented by the Union. The credible evidence does not support this claim. Moreover, this factual argument is a non sequitur because it assumes that workers who may have been dissatisfied with the strike were, by that fact, also dissatisfied with the Union. There is no credible evidence
25 that the Respondent's workers were dissatisfied with the Union. Nevertheless, several workers, including influential workers, were against the strike as well as the Union, and were prepared to cross the picket line and renounce the Union. These workers included Max Baughman at Fort Washington and Florian Kempf at Montgomeryville, both of whom were on the Union's negotiating committee.

30

1. The end of the strike - Montgomeryville

During the weekend immediately before October 7, Kempf notified many of the Montgomeryville workers to meet at the plant early on Monday. When they arrived, Kempf told
35 the workers that he had heard some union members in Fort Washington were going to cross the picket line and return to work. He explained and recommended to the workers that with this apparent breakdown in unity, the Montgomeryville workers should return to work without the Union. Kempf proposed that he would speak with management at the Montgomeryville plant about the workers coming back to work at the same pay as before the strike, but without the
40 Union. These, of course, were the same conditions imposed by Derrah Sr. in his discussions with Baughman the previous weekend. Derrah Sr., Derrah Jr., and Phil Savoca were approximately 100 feet away and were observing Kempf's discussions with the workers. Kempf then went into the plant and spoke to Savoca. After meeting with Phil Savoca for several

45

⁶ Baughman told Mower about these aspects of the deal that had been offered by Derrah Sr. The Respondent objected to the admission of this testimony for the truth of the matter asserted. This objection was overruled, and upon further consideration of the entire record, I adhere to that ruling. Baughman's statement to Mower about his agreement with Derrah Sr. explains, and
50 is confirmed by, later statements from and to Dominic Savoca and Steven Derrah when the workers returned to work on October 7.

minutes, Kempf returned to the workers with a paper⁷ on which Kempf had written "We the undersigned hereby withdraw from [sic] the Union (Local 155) and wish to decertify ourselves from such Union." (GC Exh. 10.)

5 Kempf asked the workers to sign the paper or petition,⁸ and told them that after they signed it, they could get into their cars and bring the cars onto the Respondent's parking lot. Phil Savoca also came out to the picket line and told the workers that they had to sign the paper to come back to work. Thus, the workers were offered the opportunity to return to work only if they rejected the Union, and they were presented with a petition that set forth this condition. The
10 workers signed the paper, and shortly thereafter returned to work. Kempf delivered the signed paper to Savoca upon reentering the plant. Phil Savoca immediately sent the petition through the Respondent's interoffice mail to his brother Dominic in Fort Washington.

15 The next day, Phil Savoca presented Kempf with another petition for the workers to sign. (GC Exh. 11.) Savoca asked Kempf to get the second paper signed, "if he could." Derrah Jr. prepared this second petition after receiving legal advice on the preferred wording of such a document. Derrah sent the second petition to Phil Savoca on Tuesday, October 8, and directed him to have it signed by the same workers who had signed the first petition. During the Board's investigation of the charges in this case, Kempf testified under oath that he had prepared this
20 document. Kempf elaborated in his sworn statement by explaining that he had printed the document on his personal computer, and that he had done so because he was familiar with, he was "into," computers, and in order to have a printed document rather than the handwritten document that the workers had signed the previous day. On the witness stand, Kempf admitted that none of these sworn statements were true. Kempf not only lied about preparing the
25 document, he also lied when he elaborately explained why he had prepared the document. Kempf was an untrustworthy and unreliable witness.

Kempf brought the second petition around to the various Montgomeryville workers on Tuesday morning during his work time and obtained their signatures. Kempf then directed Albert
30 Daniels to obtain the signatures of the night shift. Kempf told Daniels that he, Kempf, had drafted the second petition, rather than telling him the truth, which was that management had prepared it. (Kempf admitted that he also testified falsely when he stated to the Board's investigators that he alone distributed the second petition.) Daniels asked Kempf to obtain Savoca's approval, and Savoca did approve Daniels' circulating the petition and obtaining
35 signatures during his work time.

2. The end of the strike – Fort Washington

40 The Fort Washington employees started arriving at the plant around 5:30 a.m. on October 7. Baughman went into the plant, came back out, and told the workers, including

45 ⁷ In the affidavit he provided to the Board before the hearing, Daniels stated that he signed the petition before Kempf went into the plant. At the hearing, Daniels testified that he signed the petition after Kempf came out of the plant. I credit Daniels' testimony at the hearing because it is more plausible. Nevertheless, this credibility determination does not affect the conclusion herein that Kempf prepared the first petition.

50 ⁸ This paper, GC Exh. 10, together with the revised paper prepared by the Respondent after consultation with its attorney, GC Exh. 11, was the basis on which the Respondent withdrew its recognition of the Union. Accordingly, it is referred to herein as the union renunciation paper or as a petition, meaning an antiunion petition. Moreover, petition is the term used by the parties and the witnesses throughout the hearing.

Shubert directly, that his deal with Derrah Sr. was that if they renounced the Union they could come back to work with no pay cuts. The workers then entered the plant in piecemeal fashion.

5 Baughman testified that he did not advise any worker that he had negotiated a deal with Derrah Sr., that he did not tell any employee that there would be pay cuts if the employees did not return to work, and that he did not tell any employee that there was a deadline for them to report back to work. Baughman answered each of these questions directly and definitely. The only question that Baughman hedged on was whether he told any employee that management would allow them back to work only if they got rid of the union. Here, he said, "Not that I know of," and again, "Not to my knowledge." (Tr. 1065, 1066.)

15 Baughman was not a credible witness. He shifted between being positive and direct versus being unsure and vague, depending, at least in part, on whether it suited his apparent bias against the Union. He previously testified pursuant to an investigative subpoena that Derrah Sr. told him, everything would go on as [under] the old contract, but he could not recall Derrah's statement at the hearing. Baughman admits he told the workers that everyone could go back to work, but how would he know this unless management had told him? And it belies common sense to suppose that management would tell Baughman that the workers could come back, without also explaining the conditions under which the workers could return to work.

20 Employee William Hunt entered the plant on October 7 just before 6 a.m. He entered with five or six other workers, all of whom were night shift workers. Upon entering the plant, they engaged in a discussion with Dominic Savoca, Steven Derrah, and Derrah Jr. about how the plant would run without the Union. The managers told Hunt and the other employees to go home and return at their regular, night-shift starting time, but that there would be paperwork to sign when they returned.

30 Dominic Savoca gave the first petition he had received from his brother at the Montgomeryville plant to Hysek, who had already returned to work, and told Hysek that in order to get rid of the Union he should get the Fort Washington employees to sign it. Hysek then circulated the petition among the Fort Washington employees and obtained their signatures. Hysek had no previous knowledge of or involvement in this petition. Hysek was encouraged by management to obtain these signatures, and he solicited and collected those signatures during his worktime.

35 At about 6 a.m., Mower walked into the plant with Baughman, followed by Werner Dangelmaier and Shubert. Dominic Savoca, Steven Derrah, and Derrah Jr. confronted Mower, Shubert, and Dangelmaier when they entered the plant. Mower asked Savoca if the deal that Baughman had announced was for everyone. Savoca replied that the deal was for everyone, but there would be a paper that returning workers would have to sign. Savoca then told Mower that if he was not comfortable working without a union, he might not want to come back. Savoca talked about the company operating without a union, but Mower questioned what would happen to the employees without a union.

45 At this point, Steven Derrah interrupted and stated that management was not allowed to tell the employees about the paper that was going around; that it was against the law to mention it. Mower replied that he did not feel comfortable signing and would not sign such a document, but he did want to come back to work. Savoca replied, "Well, that's one reason why you're not welcome back." (Tr. 136.) Savoca then turned to Shubert and told him that he was not welcome back. Savoca also turned to Dangelmaier and said, "Werner, you burned your bridges; you're no longer welcome here." (Tr. 352.)

Two additional workers, John Klatcher and Steve Jaeger, had come into the room during these discussions. They asked whether they still had jobs, and both Savoca and Steve Derrah replied that Klatcher and Jaeger still had jobs and could report for work.

5 During this confrontation, the managers said nothing about keeping Mower, Shubert, and Dangelmaier out of the plant for only a short period of time or until the plant was fully operational again, and nothing was mentioned about the facial appearances of Mower, Shubert, and Dangelmaier. (Of the Respondent's several pretextual reasons for discharging Mower, Shubert, and Dangelmaier that its management and owners presented at the hearing, the "facial expression" excuse, presented by Steven Derrah, was the most incredible.) Nor was anything
10 mentioned about misconduct during the strike. Indeed, Mower, Shubert, and Dangelmaier did not engage in any misconduct during the strike. Instead, Mower, Shubert, and Dangelmaier were refused admission into the plant, and effectively discharged, because Mower had refused to sign the paper denouncing the Union and because each of them was an open and vocal
15 Union supporter.

Baughman was present for the discussions between these workers and management. Mower rebuked Baughman for failing to mention anything about signing a paper renouncing the Union as a condition of returning to work. Baughman offered to come out to the picket line with
20 the fired workers, but he failed to do so. Mower, Shubert, and Dangelmaier then left the plant and resumed picketing.

Steven Derrah denies that he told Mower, Shubert, and Dangelmaier that management was not allowed to tell employees about the paper that was going around. He also denies that
25 Savoca told the employees they had to sign the paper. Indeed, Steven Derrah testified that Savoca made no reference to the Union during that encounter. Nevertheless, Steven Derrah was not a credible witness, and his demeanor on the witness stand is simply the most prominent of the several reasons why he is not a credible witness. Under cross-examination and particularly when responding to difficult or important questions, such as what occurred when
30 Mower, Shubert, and Dangelmaier came into the plant on October 7, Steven Derrah invariably would look inquiringly to his father, who was present in the hearing room, or to the Respondent's attorney, as if to say, "What is the right answer?" and "Was that answer alright?"

Moreover, the implausibility of Steven Derrah's testimony, which was repeated, in
35 substance, by Dominic Savoca and James Derrah Jr., also detracts from its credibility. The workers at Fort Washington had just crossed the picket line, and a union renunciation paper or petition had just been received from the Montgomeryville plant and was being distributed to the workers, at the behest of management, for their signatures. Under these circumstances, it is likely that something, innocuous or otherwise, would have been said about the Union. But
40 according to Steven Derrah, nothing was said about the Union.⁹ Under all the circumstances, Steven Derrah was not a credible witness and his testimony was not credible.

Robert Miller arrived at the Fort Washington plant at about 7 a.m. He saw Mower, Shubert, and Dangelmaier picketing, and he proceeded into the plant to see if he still had a job.
45

⁹ The likelihood that Savoca mentioned the Union to Mower, Shubert, and Dangelmaier, as well as other workers, is increased when one considers the condition imposed by James Derrah Sr. on the employees returning to work, viz., for the employees to return to work without loss of benefits, the workers would have to reject the Union. However, because this latter fact itself
50 involved a credibility determination, it is not the primary basis on which this part of Steven Derrah's testimony is found incredible, as well as implausible.

He punched in at the timeclock expecting that he would be able to go back to work. He went to Supervisor Robert Taunt's office and was waiting outside that office when Steven Derrah came up to him. Derrah told Miller that all the workers wanted to go back to work without the Union. Derrah told Miller that he was welcome to come back, but if he wanted the Union, he was not welcome. Miller told Derrah that he would rather have a union, and Derrah replied, "You're not welcome then." (Tr. 284.) Miller then left the plant and joined the other three workers on the picket line.

At approximately 4 p.m. on October 7, Union District President Constance Spinnozi came to the plant and obtained the signatures of Mower, Shubert, and Dangelmaier on an unconditional offer to return to work. (GC Exh. 5.) The offer was presented to Derrah Jr., and 15 minutes later Dominic Savoca, Steven Derrah, and Derrah Jr. approached the three workers on the picket line and said they could report for work the next day. Derrah Jr. volunteered that Miller could also report the next day, even though he had not signed the letter offering to return to work. Of course, Miller had already offered to return to work, just as Mower, Shubert, and Dangelmaier had. The written letter, although more formal, offered nothing more than what these workers, like all the other workers, had already offered.

Mower, Shubert, Dangelmaier, and Miller reported for work the next day. Management said nothing to them about why they had not been permitted to return to work the previous day nor why the Respondent had, at least apparently, discharged them. None of them were ever disciplined for any alleged strike misconduct. Indeed, quite the opposite, for when Dangelmaier saw Dominic Savoca on October 8, Savoca told him that it was all just a "misunderstanding." (Tr. 357.)

Hysek returned the first petition, with signatures, to Dominic Savoca around noon on Monday, October 7, and Savoca gave the petition to Derrah Jr. After discussing the matter with corporate counsel, Derrah Jr. composed a new paper renouncing the Union and handed it to Savoca, instructing him to give both papers to Hysek in order to get the employees who signed the first petition to sign the second, revised petition. This was done, and Hysek, again during his work time, sought and obtained the employees' signatures on the second petition.¹⁰

At approximately 8 a.m. on October 7, Klatcher, who had already entered the plant and had returned to work, telephoned his friend and coworker Joseph Sebzda. Supervisor Robert Taunt got on the telephone and asked Sebzda why he had not come into work. Sebzda replied that he had a death in the family. Taunt replied that he wanted to make sure that Sebzda got back to work; he did not want to see Sebzda "screw" himself. Because of the death in his family, Sebzda did not return to work until Tuesday, October 8. On Tuesday morning, Sebzda reported to Taunt, and Taunt told him to report to Hysek "to sign a piece of paper." Sebzda asked Taunt what was on the paper, and Taunt replied that it said the workers did not want the Union. Sebzda asked what would happen if he did not sign the paper, and Taunt replied that he might not have a job if he did not sign the paper.

Employees Geoffrey Olson and Frank Taubenkraut arrived at the plant at 9:45 a.m. on October 7 for the start of their regular picketing shift, and learned that the employees had returned to work. They went into the plant to see if they still had jobs, and met James Fisher, a supervisor. Fisher told them to talk to Hysek. Hysek told them that he had a sheet for them to sign, that everyone who was back to work had signed it, and that they ought to sign it to get

¹⁰ The paper described as the first paper is GC Exh. 10. The paper described as the second paper is GC Exh. 11.

their jobs back. Olson and Taubenkraut asked to see someone from management, and Hysek told them, "I'll take you over to see Dominic," and he did so. (Tr. 438.) Outside of Savoca's office, Olson and Taubenkraut were met by Savoca and Steven Derrah. Olson asked if he still had a job, and Savoca said that he should see Hysek. Olson replied that he had already talked to Hysek. Taubenkraut then asked Derrah if he signed the paper that Hysek had, could he return to work. Derrah replied that he could not tell Taubenkraut to sign the paper, but if he did sign the paper he could go back to work. Olson asked Savoca if he (Olson) signed the paper, could he come back to work the next day because he did not have work clothes with him. Savoca replied that he could, as long as he did not have a problem with there being no union. Olson replied "okay," and they then went to see Hysek, who was working, and signed the paper that Hysek was then keeping in his area.

At approximately 12:30 p.m. on October 7, Junior Castillo was at the house of his cousin, Luis, while Luis called the plant in order to talk with Dominic Savoca and Steven Derrah. Since Luis speaks very little English, he handed the telephone to Junior. Junior inquired whether he still had a job, and Savoca replied that he wanted Castillo to come back, but he wanted to make sure that Castillo really wanted to come back. Steven Derrah then told Castillo that he could come into the plant that day to sign the paper, and he could return to his job the next day, if he wished. Castillo agreed that he and Luis would come in that day and sign the paper.

When Junior and Luis arrived in the plant, they were met by Supervisor Taunt who, after talking to Savoca, told them to report to Hysek. When they reported to Hysek, he told them, "If you want to keep your job, you gotta sign this paper." (Tr. 217.) They both signed the paper and returned to work the next day.

William Hunt arrived back at the Fort Washington plant at 3:30 p.m., after he had been called and instructed by Waller to report early for work. Waller told Hunt that she had been calling everybody to come in early to sign paperwork. The Respondent did not explain why it had instructed Waller to tell the night-shift employees to report early for work. However, the reason is apparent. The Union and the Respondent were scheduled to resume their bargaining at 4 p.m. on October 7. The Respondent wanted the night-shift employees to report early in order to sign the antiunion petition before the scheduled 4 p.m. session, which, in turn, would supposedly give the Respondent a legally justifiable reason to refuse to meet with the Union. The Respondent's objective was accomplished, and it refused to meet with the Union at 4 p.m. on October 7.

When Hunt arrived at the plant, he was instructed, either by management or one of the day shift workers, to help four or five Hispanic employees who had been presented with, but had not yet signed, the union renunciation paper. (Curiously, Hunt does not speak Spanish.) To the best of his ability, Hunt told the Hispanic employees what was written on the paper. Hunt told them that he did not know when they might be getting any raises, but he thought that signing the paper was the best way to get back to work. All of these workers then signed the paper. The only paperwork that the Respondent's management asked Hunt to sign on October 7 was the union decertification petition.

Later that day and during his night-shift hours, Hunt was called to his supervisor's office. Dominic Savoca, Richard Johnson, Robert Taunt, and Daniel Kenney were in the office. Savoca told Hunt to take both of the union renunciation petitions and make sure that every employee who signed the first one also signed the second one. Hunt did as he was told. He found one or two who had not signed both, and he obtained their signatures. He then put the papers on Savoca's desk.

These previous examples show that the signatures on the two petitions or papers renouncing the Union were not voluntary and that the papers cannot be relied on to reflect the uncoerced and voluntary choice of the employees. The case of Antonio Castillo takes even these unfortunate examples to another, regrettable level. Antonio Castillo is the father of Junior Castillo. Antonio speaks very little English, and he cannot read English. Denise Waller called Antonio on Monday, October 7, at about 1 p.m. She told him that he should come to work early that day. Antonio went to the plant at 3 p.m.; his normal start time was 6 p.m. He was directed to see someone in the dies department. (Antonio did not know the name of the worker to whom he was directed. However, it should be noted that Hysek worked in the dies department.) The worker in the dies department told Antonio that if he were interested in continuing to work, he would have to sign the paper. Antonio then signed the paper.

On or about December 12, 2002, Antonio was called into an office at the plant. Present in that office were the Respondent's attorney and two other Hispanic workers. Antonio was handed a document to sign, which he did not and could not read. (GC Exh. 7.) No one in the office, least of all the attorney, explained to Antonio what was in the document or asked whether the statements in it were true or even whether Antonio understood what was in the document. Antonio signed it because he had heard from other workers that if he did not, he would lose his job. The document contains a number of false statements, including "When I returned to work on October 7, 2002, I was not directed to sign a petition indicating that I no longer wished to be represented by the Union as a condition of employment," and "The Company did not hold a mandatory meeting for all bargaining unit employees on Friday, October 4, 2002 [sic]. I am not aware of any meeting on October 4, 2002 [sic] between management and employees where Steve Derrah discussed the idea of forming a committee of employees to deal with management."¹¹ Antonio did not know he was signing a document that contained false statements.

These events do not speak well for the Respondent, and show the depths to which it is willing to go in order to attempt to manufacture evidence to defeat the unfair labor charges that have been filed in this case. Moreover, I do not believe it is entirely coincidental that the charge in Case 4-CA-31779 was filed by the Union on December 6, 2002, and the statement that the Respondent's attorney prevailed upon Antonio to sign is dated December 13, 2002. Upon consideration of the entire circumstances, I consider General Counsel Exhibit 7 to be evidence for the opposite of what is contained therein, including the opposite of the sentences quoted above. Nevertheless, this evidence is simply cumulative of the abundant proof in this case that the Respondent's workers were directed to sign the petitions renouncing the Union as a condition of being able to return to work, that their signatures on the petitions were not voluntary, and that Steven Derrah initiated the proposal for, and announced to the workers, the formation of a committee of employees to take the place of the Union.

C. Withdrawal of Recognition

A negotiating session had been scheduled between the Union and the Respondent for October 7 at 4 p.m. The Respondent refused to attend that session, and indeed, refused to again meet with the Union as the employees' representative. The Respondent formalized its withdrawal of recognition in its letter to the Union dated October 8.¹²

¹¹ The significance of this latter statement is discussed below.

¹² R Exh. 2. The parties stipulated to substitute this letter, the intended exhibit, for the inadvertent and unintended document initially provided by the court reporter. The parties' stipulation is hereby approved.

D. The Shop Committee

5 About 1 week after the employees returned to work, Denise Waller announced over the public address system in the Fort Washington plant that the employees should report to the cafeteria for a meeting. Derrah Sr., Derrah Jr., Steven Derrah, Dominic Savoca, and other supervisors were present. Derrah Sr. presided over the meeting. Derrah Jr. announced that the Union no longer represented the workers. Derrah Sr. spoke about forming a shop committee that would take the place of the Union and would represent the employees. He said that it would be "just like" the workers actually had a contract; the committee would represent any worker in a grievance. The committee would also provide "representation, leadership, [and] liaison," and would "deal with management." (Tr. 315, 689.) Steven Derrah told the employees that the Respondent wanted the workers to have a representative to convey issues or concerns to management. He indicated the committee would be just like the committee of shop stewards that existed under the Union. Derrah Sr. asked the employees to submit names of persons to management for nomination to the shop committee. He said the Respondent would prepare the ballots so that the workers could elect the shop committee.

20 One week after the first meeting, Waller announced another meeting over the public address system. Again, all employees and managers gathered in the cafeteria where Steven Derrah presided. He said that the shop committee would create a guidebook of work rules, and that the book would be created in negotiations between the shop committee and management. He said that no names had been submitted for the shop committee, but that Baughman and Hysek had volunteered to serve on the committee if no one else was willing. Because no one else volunteered or was nominated, Baughman and Hysek were placed on the shop committee.

30 Supervisor Richard Johnson held a meeting at Fort Washington for the night shift workers who had not been able to attend the meeting with Steven Derrah. Johnson talked about the shop committee and said that the workers would be better off with the committee rather than the Union. He told the night-shift employees that they would vote for members of the committee. About 2 weeks later, an election was held in the cafeteria for the night shift employees. The two candidates were William Hunt and Jeff Pepper. Paper ballots were used, and Hunt won. As a shop committee member, Hunt has participated in about three disciplinary actions. On each occasion, management, viz., supervisor Johnson, told him to participate.

35 Hysek testified that he knew nothing about a shop committee. (Tr. 972.) He then recanted by saying, "Yeah, I'm trying to remember that shop committee question, you know. Did I answer right? I don't know. Do I know anything about a shop committee? There was talk about maybe having a shop committee, you know what I mean? So maybe my answer was wrong." (Tr. 973.) His answer was wrong only if it was false, and it was. Hysek volunteered to be a member of the shop committee, he was placed on the committee by management, and while serving on the committee, he represented several employees in dealings with management. Both Derrah Sr. and Steven Derrah specifically called the committee the "shop committee" in meetings attended by Hysek, and that is the committee for which Hysek volunteered. It is not credible that Hysek did not know and remember the talk of, the existence of, his involvement with, and his membership on the shop committee.

50 As a member of the shop committee, Hysek represented employees in disciplinary matters. Typically, management would call him to sit with and represent employees who were facing discipline. As Hysek said, he is present at disciplinary meetings to "[m]ake sure everything goes smooth." (Tr. 976.) For example, several weeks before the hearing in this case, Steven Derrah called Hysek to participate in a disciplinary meeting with an employee who was

accused of stealing. After the disciplinary meeting, that employee was issued a written warning. On another occasion, Hysek and Baughman were asked by Steven Derrah to attend a disciplinary meeting involving Geoffrey Olson. This occurred on November 9, 2002. Derrah questioned whether Olson's doctor's notes properly covered a period when Olson was absent.

5 After Baughman spoke up for Olson, Derrah agreed that Olson would be allowed to get another doctor's note. Hysek was present for at least four separate disciplinary actions. He has also helped workers with vacation and health benefits. Both Hysek and Baughman have signed disciplinary reports involving workers in cases where Hysek and Baughman were representing the employees. On one occasion, Baughman purported to represent all employees when he

10 prevailed on Steven Derrah to change the employees' work conditions and to abide by a time limit, or a limitations period, for the imposition of discipline for past offenses.

The shop committee in the Montgomeryville plant was elected by a show of hands. Kempf and John Miller were elected to the committee. Kempf and Miller have represented

15 employees in disciplinary meetings on several occasions. Kempf described his role as "giving [the employee] support and mak[ing] sure that the meeting went fair, like a mediator." (Tr. 881.)

E. Respondent's Prehearing Contacts with Witnesses

20 The present case was originally set for hearing on July 1, 2003. In the beginning of June 2003, Junior Castillo talked to his supervisor, Daniel Kenney, about Castillo's pay and the possibility of receiving a raise. Kenney told Castillo that he would talk to Steven Derrah about Castillo's request. At the end of June 2003, and shortly before the first scheduled start of the hearing in this case on July 1, 2003, Steven Derrah approached Castillo in the plant and

25 requested him to meet with Derrah in Derrah's office. Derrah told Castillo that he wanted to speak about the situation with the Union because he was getting ready for the hearing. Derrah assured Castillo that he would not be penalized if he chose not to speak with Derrah. Castillo agreed to talk.

30 Derrah asked Castillo whether anyone from management had told Castillo to sign the paper renouncing the Union. Castillo told him no, which was literally, but not substantially, true. Derrah asked Castillo the same question about five times, but in different ways, and on each occasion, Castillo responded "no." Derrah asked whether Mower was the one making complaints to the NLRB, and Castillo said, "no." Derrah then addressed Castillo's pay. Derrah

35 told Castillo that if he worked overtime and worked hard, Derrah would take care of him. Derrah finished the meeting by telling Castillo that he knew the workers who want the Union and the workers who do not.

40 On another occasion, and again shortly before July 1, 2003, the Respondent's attorney questioned Albert Daniels in Phil Savoca's office. After giving *Johnnie's Poultry* warnings to Daniels, counsel asked Daniels to provide him with a copy of his affidavit. See *Johnnie's Poultry Co.*, 146 NLRB 770 (1964). Daniels refused. About 1 week later, Phil Savoca asked Daniels for a copy of his affidavit, but without giving him any warnings. On several more occasions, Savoca continued, without avail, to press Daniels to provide a copy of his affidavit, the last time

45 occurring in late August 2003, about 2 weeks before the hearing in this case. Savoca failed to give *Johnnie's Poultry* warnings every time he asked Daniels for a copy of his affidavit.

In late August 2003, Steven Derrah asked Klatcher if he would give a copy of the affidavit he signed in the Board's investigation of the charges in this case to the Respondent's

50 attorneys. Derrah assured Klatcher that he did not have to turn over his affidavit. Nevertheless, Klatcher agreed and gave Derrah his affidavit the next day.

F. Analysis

Section 8(a)(1) of the Act provides that it shall be an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7” of the Act. Section 7 guarantees to employees the right to form, join, or assist labor organizations. A violation of Section 8(a)(1) does not depend on the employer’s motivation or on the subjective reaction of the employees or on whether the coercion succeeded or failed. Rather, the Board’s test is whether the supervisor’s conduct reasonably tended to interfere with the free exercise of the employee’s rights under the Act. *Southwire Co.*, 282 NLRB 916 (1987). In making this determination, all of the circumstances are considered, including the context in which the alleged unlawful statement or action occurred. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

1. Agency status of Hysek and Waller

Prior to the close of the hearing, the General Counsel offered a second amendment to the consolidated complaint, which sought to amend paragraph 4(b) of the complaint. (This amendment is also discussed below regarding its affect on paragraph 8 of the complaint.) The General Counsel’s second amendment was granted. The second amendment modified the existing allegation in paragraph 4(b) and added a second allegation. First, it clarified the position held by Waller at the Respondent by alleging that she was the human resources administrator, rather than the original allegation that she was a secretary. Waller was the Respondent’s witness, and her testimony lead to the clarifying language. This amendment was properly granted, it did not affect the substantial rights of the Respondent, and it was necessitated by the testimony of the Respondent’s own witness.

Second, the amendment added an allegation that Hysek was an agent of the Respondent. The Respondent objects to this amendment and argues that it was not given a fair opportunity to present evidence concerning the allegation. This objection is denied. The amendment regarding Hysek does not allege any additional facts. It does allege an additional legal theory, but the Respondent has had the full opportunity to factually address and legally argue this new legal theory at the hearing and posthearing. The General Counsel’s witnesses testified at the hearing that Hysek made certain statements. The Respondent was certainly aware of the significance of the statements throughout the hearing. Indeed, the Respondent called Hysek as a witness and asked him about all of his actions in this case, including those statements.

The Respondent alleges no facts that it was prevented from proving or was lulled into not presenting. Moreover, the Respondent was able to meet and respond to all of the facts on which the General Counsel relies in alleging that Hysek was the Respondent’s agent. The facts relating to Hysek’s agency status concerned his following management’s directions in soliciting signatures for the antiunion petitions. Hysek was given a full opportunity to testify about his conduct and instructions in soliciting signatures. He was not a particularly credible witness, but this does not affect the full opportunity given to and utilized by the Respondent to meet the allegations in the second amendment filed by the General Counsel. The Respondent had and took advantage of the opportunity to address the matters alleged in the General Counsel’s second amendment. Accordingly, the amendment was granted when it was offered by the General Counsel, subject to subsequent argument by the Respondent, and upon reconsideration, that ruling is confirmed.

Hysek was given the antiunion petitions by Dominic Savoca and directed to obtain employee signatures on the petitions. Hysek then solicited employee signatures, and told some

employees that they had to sign the petitions in order to keep their jobs. Waller telephoned employees on October 7 and instructed them to come early to work in order to sign a petition. The issue is whether Hysek and Waller were agents of the Respondent.

5 In determining whether an employee is an agent of an employer, the Board applies common law agency principles. When the employee acts with the apparent authority of the employer, the employer is responsible for the conduct. *D&F Industries, Inc.*, 339 NLRB No. 73 (2003). Apparent authority results from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts in question. *Southern Bag Corp.*, 315 NLRB 725 (1994).

10 The test for determining whether an employee is an agent of the employer is whether, under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management. *Waterbed World*, 286 NLRB 425, 426–427 (1987), *enfd.* 974 F.2d 1329 (1st Cir. 1992). Thus, this test is satisfied when the employee is held out as a conduit for transmitting information from management to other employees. *Cooper Industries*, 328 NLRB 145 (1999). Among other relevant circumstances are (1) the position and duties of the employee, and the context in which the action occurred, *Jules V. Lane*, 262 NLRB 118, 119 (1982), (2) whether the conduct is related to the duties of the employee, *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426 (1998), and (3) whether the conduct was consistent with other statements or actions of the employer. *Id.* at 428. Section 2(13) of the Act provides that “whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.”

25 Hysek is a nonsupervisory employee. However, the context in which he solicited employee signatures on antiunion petitions was an environment in which the Respondent had committed numerous 8(a)(1) violations, and had conditioned the employees’ return to work on their rejection of the Union. Dominic Savoca gave the antiunion petitions to Hysek and authorized him to obtain signatures on them. Moreover, when returning employees, such as Hunt and Junior Castillo, asked management, such as Dominic Savoca, Steven Derrah, and Robert Taunt, what they should do, management directed the employees to Hysek. Thus, Hysek had the apparent and real authority to solicit employee signatures on behalf of the Respondent, and the apparent authority to advise the employees of the consequences of their failure or refusal to sign the antiunion petitions.

35 Waller is the Respondent’s human resource administrator and its payroll and benefits administrator. Her direction to William Hunt, as well as to Antonio Castillo, was consistent with other statements by the Respondent, such as the statements of Dominic Savoca, Derrah Jr., and Steven Derrah in the morning of October 7 that when Hunt returned for his night shift there would be paperwork to be signed. Moreover, her directions to Hunt and Castillo were effectively ratified by the Respondent when Hunt and Castillo, and presumably the other employees she telephoned, after they reported early for work, were directed by management to Hysek and coercively presented with the decertification petition by Hysek. That is, management directed the employees to do the very thing for which Waller told them to report early. These factors reinforce the conclusion of Waller’s agency status that independently arises from the Respondent holding her out as a conduit for transmitting information to the employees. In addition to her telephone calls to and conversations with various employees on October 7, Waller admitted that she has contacted employees on other occasions to transmit information from management.

50 For the foregoing reasons, Hysek was the Respondent’s agent when he solicited employees to sign the antiunion petitions, and Waller was the Respondent’s agent when she

telephoned employees on October 7 and told them to report early for their shift in order to sign paperwork.

2. Complaint Cases 4–CA–31660 and 31779, paragraphs 6 and 12,
(Violations of Section 8(a)(1)).

Complaint Cases 4–CA–31660 and 31779, paragraph 6, alleges that the Respondent, by Dominic Savoca and Steve Derrah, violated Section 8(a)(1) of the Act by the conduct and activities set out in the following, separately numbered subparagraphs.

a. Paragraph 6(a) (By telephone, told one employee that, in order to return to work, the employee had to sign a petition stating that employees no longer wished to be represented by the Union.)

An employer violates Section 8(a)(1) by initiating a decertification petition, by soliciting signatures for the petition, or by lending more than minimal support and approval to the petition. *Eastern States Optical Co.*, 275 NLRB 371 (1985). An employer who only renders “ministerial aid” to an employee-initiated decertification petition does not violate the Act; however, the employer’s actions must occur in a “situational context free of coercive conduct.” *D & H Mfg. Co.*, 239 NLRB 393, 403 (1978). Thus, while an employer may, for example, refer “an employee to the Board in response to a request for advice relative to removing a union as the bargaining representative, it is unlawful for him subsequently to involve himself in furthering employee efforts directed toward that very end. *Placke Toyota*, 215 NLRB 395 (1974). Accordingly, “[o]ther than to provide general information about the process on the employees’ unsolicited inquiry, an employer has no legitimate role in that activity, either to instigate or to facilitate it.” *Armored Transport, Inc.*, 339 NLRB No. 50 (2003), quoting from *Harding Glass Co.*, 316 NLRB 985, 991 (1995).

An employer violates the Act when it acts directly, as well as when it acts with a go-between, in furthering the decertification effort. *Pic Way Shoe Mart*, 308 NLRB 84 (1992). In assessing the employer’s actions and the effect of those actions, the essential inquiry is whether “the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned.” *Vic Koenig Chevrolet, Inc.*, 321 NLRB 1255 (1996), quoting *KONO-TV-Mission Telecasting*, 163 NLRB 1005, 1006 (1967).

In *Placke Toyota*, supra, the employer did not initiate the decertification petition nor urge its employees to sign it. Nevertheless, the Board held that the employer provided more than minimal support and approval for the securing of signatures to the decertification petition by (1) typing the petition on company letterhead, and (2) placing the petition on the supervisor’s order desk, where the employees could sign the petition. The supervisor used the order desk to distribute work orders and receive completed work orders from the employees. The Board held that these actions by the employer constituted unlawful support and assistance in the signing of the petition.

In the present case, the Respondent’s support and assistance to the petition and the signing of the petition far exceeds the unlawful actions of the supervisor in *Placke Toyota*. Here, the Respondent initiated the petition in the Fort Washington plant. It then assigned a go-between, the antiunion worker Hysek, to solicit signatures from all workers in the plant, and to do so on his working time. Hysek was even given the authority to delegate his duties to another worker so that the signatures of the night shift could be solicited. Hysek also controlled access to management, as shown when he took Olson and Taubenkraut to see Dominic Savoca after they questioned whether they had to sign the petition. The Respondent also made it clear to all

the workers, by the statements and actions of Derrah Jr., Steven Derrah, Dominic Savoca, and Hysek, that the workers were expected and required to sign the petition as a condition of returning to work.

5 The charge presently under consideration concerns the telephone conversation on October 7 between Dominic Savoca and Steven Derrah with Junior Castillo and Luis Castillo. Junior asked whether he still had a job, and Savoca replied that he wanted Castillo to come back, but he wanted to make sure that Castillo really wanted to come back. Steven Derrah then told Castillo that he could come into the plant that day to sign the paper, and he could return to his job the next day, if he wished. The statement by Savoca and Derrah to Junior Castillo that they wanted to make sure he “really wanted to come back” was a veiled threat and a test. The test was whether Castillo would show that he really wanted to come back to work by accepting the next thing Savoca and Derrah said, which was that he could come to the plant that day, not to work, but to sign the paper. The threat was that if Castillo did not demonstrate that he really wanted to come back to work by signing the paper, there would be no work to come back to. Savoca and Derrah did not expressly state to Castillo that signing the petition was a condition of working. However, what they did say made that condition even more clear, as well as threatening.

20 Moreover, what Savoca and Derrah made clear by subterfuge and indirection, Hysek stated openly. When Luis and Junior Castillo came to the plant on October 7, Savoca referred them to Hysek who told them, “If you want to keep your job, you gotta sign this paper.” (Castillo’s testimony regarding this statement is credited, rather than Hysek’s general denial, for the following reason, in addition to the reasons previously set forth herein. It is apparent that management used Hysek as its agent so that management could avoid directly telling the workers to sign the petition, thus attempting to insulate management from Hysek’s statements and instructions to the workers from whom he solicited signatures. An example of management’s intent is displayed in Steven Derrah’s disingenuous statement to Taubenkraut that he could not tell Taubenkraut to sign the paper. Accordingly, it is more likely that Hysek’s directions to the workers would be more direct than the directions given by management.) Luis and Junior Castillo signed the paper renouncing the Union and returned to work the next day.

35 Accordingly, the Respondent violated Section 8(a)(1) of the Act by telling Junior Castillo, by telephone, that in order to return to work, he had to sign a petition stating that employees no longer wished to be represented by the Union.

b. Paragraph 6(b) (At the Ft. Washington Plant, told two employees that, in order to return to work, they had to sign a petition stating that employees no longer wished to be represented by the Union.)

40 On October 7, Olson and Taubenkraut met Savoca outside Savoca’s office in the Fort Washington plant. Olson asked Savoca if he still had a job. Savoca replied that Olson should see Hysek, and Olson responded that he had already seen Hysek. Because Hysek was a tool and die maker, was not a supervisor, and had no authority over whether Olson or any other worker still had a job, the meaning of this statement in context was that Olson and Taubenkraut had to sign the union renunciation paper in Hysek’s possession before Savoca could answer the question. Taubenkraut then asked Steven Derrah, if he (Taubenkraut) signed that paper, could he return to work. Derrah replied that he could not tell Taubenkraut to sign the paper, but if he did sign it, he could go back to work. Olson asked Savoca if he (Olson) signed the paper, could he come back to work the next day because he did not have work clothes with him. Savoca replied that he could, as long as he did not have a problem with there being no union. Olson replied, “okay,” and they then went to see Hysek, who was working, and they signed the paper.

Again, the subterfuge and indirection by Savoca and Derrah do not hide the real intent and coercion of their statements. Indeed, such subterfuge makes their statements even more threatening. Savoca and Derrah knew what the law prohibited, and they were willing to direct workers to do the very thing that the law prohibited, but without actually saying it. Derrah could well have been winking as he told Taubenkraut that he (Derrah) could not tell him to sign the paper, and although there is no proof of this, it would be consistent with the circumstances. In any event, the law is not restrained by such duplicity.

By their statements to Olson and Taubenkraut, Derrah and Savoca conditioned the employees' right and ability to return to work on the requirement that they sign the union decertification petition. Derrah and Savoca then directed these employees to the Respondent's handpicked agent, Hysek, to sign that petition. To condition a worker's right to work on the worker signing a paper renouncing the union ineluctably results in the employer rendering unlawful assistance to the petition. Such a condition violates Section 8(a)(1) of the Act. *Eddyleon Chocolate Co.*, 301 NLRB 887 (1991); see *Pratt Towers, Inc.*, 338 NLRB No. 8 (2002).

Accordingly, the Respondent violated Section 8(a)(1) of the Act by telling Olson and Taubenkraut that they had to sign the union decertification petition before they could return to work.

c. Paragraph 6(c) (At the Ft. Washington Plant, told three employees that they were not welcome to return to work because they were refusing to sign a petition stating that employees no longer wished to be represented by the Union.)

When Mower, Shubert, and Dangelmaier walked into the Fort Washington plant on October 7, Dominic Savoca told Mower that there was a paper being circulated that returning workers had to sign, and that if Mower was not comfortable working without a union, he might not want to come back. Steven Derrah cautioned Savoca and the workers by stating that management was not allowed to tell the employees about the paper that was going around; that it was against the law to mention it. Mower said that he did not feel comfortable signing the union decertification petition and would not sign such a document, but he did want to come back to work. Savoca replied, "Well, that's one reason why you're not welcome back." Savoca then turned to Shubert and told him that he was not welcome back. Savoca also turned to Dangelmaier and said, "Werner, you burned your bridges; you're no longer welcome here."

Shubert and Dangelmaier were union advocates and had spoken in favor of the Union at the last union meeting before the strike. Respondent's management witnessed this meeting. Moreover, Shubert was the current shop steward and was on the bargaining committee where he had recently had a confrontation with Derrah Sr. Mower was a former shop steward and a member of the bargaining committee. Mower, Shubert, and Dangelmaier did not engage in any misconduct during the strike, and no credible reason was offered by the Respondent to explain why it did not allow Mower, Shubert, and Dangelmaier to work when they offered to return the morning of October 7.

The Respondent makes factual arguments regarding management's meeting with Mower, Shubert, and Dangelmaier, none of which withstand analysis. The Respondent states that Jaeger confirmed "unequivocally" that Savoca said nothing about signing a petition. (R.'s Posthearing Br., p. 14.) This statement does not accurately cite Jaeger's testimony. In fact, Jaeger's testimony on this point was

Q. Okay, did he [Dominic Savoca] say anything about employees signing a petition?

A. Not to me, no.

5 (Tr. 937.) This is anything but an unequivocal confirmation by Jaeger that Savoca said nothing about signing a petition. Secondly, the Respondent acknowledges that Savoca told these three workers that they had “burned their bridges,” and argues that Mower, Shubert, and Dangelmaier were not permitted to return to work because of the expressions on their faces and picket line misconduct. But Mower, Shubert, and Dangelmaier engaged in no picket line misconduct and
10 have never been cited by the Respondent for such misconduct. And, the phrase that they had “burned their bridges” is incongruent with the notion that their facial expressions were the reason for their discharges. On the other hand, there are the overriding, and not simply coincidental, facts that Shubert and Dangelmaier were vocal, union supporters (Steven Derrah called Dangelmaier “outspoken”), and Shubert was the Union’s shop steward.

15 The Respondent’s actions in the morning of October 7 were consistent with and reflected the Respondent’s intent to discharge Mower, Shubert, and Dangelmaier. For example, Steven Derrah remembered that Savoca told these workers they “had burned out their welcome and weren’t welcome back in the company.” (Tr. 738.) However, at the hearing, the
20 Respondent changed its position and maintained that it simply did not want these workers in the plant on that day, October 7, when production was getting restarted, because of the potential for disruption. Nevertheless, even if this contention were accepted, it represents a shift in the Respondent’s explanation of its action. Moreover, the inevitable conclusion from this new explanation, under all the circumstances in this case, is that the Respondent wanted to keep
25 Mower, Shubert, and Dangelmaier out of the plant on October 7 so that they would not resist, and possibly get other workers to resist, the signing of the union decertification petitions that the Respondent was coercing the workers to sign that day in the Fort Washington plant. Union advocacy is the only “disruption” that Mower, Shubert, and Dangelmaier ever engaged in, as far as this record discloses. Thus, even crediting the Respondent’s argument and factual
30 contention, the Respondent’s actions against Mower, Shubert, and Dangelmaier violate Section 8(a)(1) of the Act because the Respondent kept these workers out of the plant on October 7 in order to interfere with their and the other workers’ Section 7 rights.

35 The immediate reason for the Respondent’s discharge of Mower on October 7 was his refusal to sign the union renunciation petition. However, this was not the reason Shubert and Dangelmaier were not allowed back to work because they were turned away before they were given a chance to say whether they would sign such a document. Nevertheless, Shubert and Dangelmaier were prevented from returning to work because of their union activities and sympathies. Both of the reasons for the Respondent’s discharges of Mower, Shubert, and
40 Dangelmaier are unlawful and violate the Act. However, the Respondent’s action taken against Mower is the only action within the meaning of this subparagraph of the complaint.

45 Although this subparagraph charges that the Respondent told three employees they were not welcome back because of their refusal to sign the union renunciation petition, the charge is sustained because the Respondent’s action was equally unlawful whether Savoca made the statement to one or to three workers. Accordingly, the Respondent violated Section 8(a)(1) of the Act by telling Mower that he was not welcome to return to work because of his refusal to sign the union renunciation petition.

50 d. Paragraph 6(d) (At the Ft. Washington Plant, told one employee that the employee was not welcome to return to work because the employee was refusing to sign a petition stating that employees no longer wished to be

represented by the Union.)

When Robert Miller returned to work on October 7, Steven Derrah met him outside supervisor Traut's office. Derrah told Miller that the workers all want to go back to work without the Union. Derrah told Miller that he was welcome to come back, but if he wanted the Union, he was not welcome. Miller told Derrah that he would rather have a union, and Derrah replied, "You're not welcome then." (Tr. 284.) Miller then left the plant and joined the other three workers on the picket line.

Steven Derrah made the statement to Miller because Miller wanted to be represented by a union, not because he refused to sign the union decertification petition. At least, the former reason was the proximate reason for the statement, however much Derrah may have anticipated, as he likely did, that Miller would also refuse to sign the petition. Nevertheless, both of these reasons are equally unlawful and violative of Section 8(a)(1), and the issue is essentially identical, viz., did the Respondent's statement reasonably tend to interfere with the free exercise of the employee's rights under the Act. The Respondent was on notice of the ultimate issue. The Respondent presented evidence that the real reason it discharged Miller was because Miller engaged in strike misconduct by swearing and yelling at Derrah Sr. during the strike. Steven Derrah testified, denied the foregoing exchange with Miller, and denied making the charged statement to Miller. This evidence, if it had been found credible, would have constituted a defense to the charge in the present subparagraph. Although Steven Derrah's testimony was found not credible, the issue was fully and fairly litigated.

The Board may find and remedy a violation of the Act even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated. *Pergament United Sales*, 296 NLRB 333 (1989). The violation found herein—that the Respondent made the statement to Miller because Miller wanted union representation—is closely connected to the violation alleged in the complaint—that the Respondent made the statement to Miller because he refused to sign a petition stating that employees no longer wished to be represented by the Union. Moreover, the Respondent has not addressed this issue in its posthearing brief.

Steven Derrah's statement to Miller was that Miller could not work for the Respondent if he wanted to be represented by a union. The statement patently interferes with and restrains employees in the exercise of Section 7 rights, it was fully and fairly litigated, and it is closely connected to the violation alleged in this subparagraph of the complaint. Moreover, I conclude that the Respondent's failure to address the issue at the hearing or in its posthearing brief constitutes a waiver of the issue. Accordingly, for all of the foregoing reasons, the Respondent violated Section 8(a)(1) of the Act by telling Miller that he was not welcome to return to work because Miller wanted to be represented by a union.

3. Complaint Cases 4–CA-31660 and 31779, paragraphs 7 and 12, (Violations of Section 8(a)(1))

a. Complaint Cases 4–CA-31660 and 31779, paragraph 7(a), alleges that the Respondent, by Derrah Jr. and/or Steven Derrah, violated Section 8(a)(1) of the Act by telling an employee that there would be a petition for the employee to sign when the employee returned to work in a later shift, and the petition stated that employees no longer wished to be represented by the Union.

When employee William Hunt entered the plant in the morning of October 7, Dominic Savoca, Steven Derrah, and Derrah Jr. told him to go home and return at his regular, night shift

starting time, but that there would be paperwork to sign when he returned. After he returned home, Hunt was called by Denise Waller who said she had been calling everybody, including him, to come in early to sign paperwork. After Hunt returned to the plant, and after “explaining” the petition to the Hispanic workers, he and the Hispanic workers signed the petition.

5

An employer may not suggest to an employee that he sign a union renunciation petition. *Griffin Inns*, 229 NLRB 199, 207 (1977). In the present case, Hunt was not specifically told that he must sign the petition. However, the statements to him by Savoca, Derrah Jr., Steven Derrah, and Denise Waller made it clear that he was expected to sign the petition. While the consequences of not signing the petition were not spelled out by management, one must consider the environment in which these statements were made, including (1) other 8(a)(1) violations by the Respondent, (2) the ending of the strike on October 7 and the desire of the employees to retain their jobs, (3) the condition placed by Derrah Sr. on returning employees that they renounce the Union, and (4) the discharge of four union supporters who were then picketing the Fort Washington plant in full view of all the other employees in the plant who were permitted to return to work.

10

15

20

25

Hunt testified that he signed the petition voluntarily and he did not really feel pressure from management to sign the petition. Although these assertions are doubtful in light of the circumstances, it is not necessary that the credibility of the statements be resolved. A violation of Section 8(a)(1) does not depend on the subjective reaction of the employee. Rather, the Board’s test is “whether the supervisor’s conduct reasonably tended to interfere with the free exercise of the employee’s rights under the Act.” *Southwire Co.*, supra. Under the circumstances of this case, the statements of Dominic Savoca, Derrah Jr., Steven Derrah, and Waller reasonably tended to interfere with Hunt’s free exercise of his Section 7 rights.

Accordingly, the Respondent’s statements to Hunt that there would be paperwork for him to sign when he returned to work on October 7 violated Section 8(a)(1) of the Act.

30

b. Complaint Cases 4–CA–31660 and 31779, paragraph 7(b), alleges that the Respondent, by Robert Taunt, violated Section 8(a)(1) of the Act by directing a striking employee on October 7 to abandon the strike and return to work, and by telling the employee that if the employee did not do so, the employee would be “screwed out of a job;” and further, that the Respondent violated Section 8(a)(1) of the Act when Taunt told the employee on October 8 that if the employee did not sign the petition he might not have a job.

35

40

On October 7, supervisor Taunt spoke to his employee, Sebzda, by telephone, asked him why he had not come into work, and said that he wanted to make sure that Sebzda got back to work and did not “screw” himself. Sebzda returned to work on October 8, and reported to Taunt. Taunt told him to report to Hysek “to sign a piece of paper.” Sebzda asked Taunt what was on the paper, and Taunt replied that it said the workers did not want the Union. Sebzda asked what would happen if he did not sign the paper, and Taunt replied that he might not have a job if he did not sign the paper.

45

50

Taunt testified that he did talk to Sebzda by telephone on October 7, but that he only told Sebzda that he should come into work. Taunt further testified that on October 8, Sebzda asked Taunt about a subpoena, and that Taunt simply directed him to Hysek. This testimony is not credible. There was no explanation of why Sebzda would have made a reference to a subpoena nor is there any corroboration for the existence of such a subpoena in the record. Moreover, Taunt failed to explain why he would have directed Sebzda to Hysek regarding a subpoena when Hysek’s responsibility only extended to obtaining signatures on the petitions. There is no evidence that Hysek had any responsibility regarding subpoenas to employees. Taunt, perhaps

realizing that he could not deny meeting with Sebzda, instead dissembles on the substance of their conversation. In any event, Taunt was not a credible witness and his testimony, especially relating with his discussions with Sebzda, was not credible.

5 The Respondent violated Section 8(a)(1) of the Act by Taunt's solicitation of Sebzda to sign the decertification petition. This violation, consummated when Taunt solicited Sebzda to sign the petition, was exacerbated when Taunt accompanied his solicitation with the threat that Sebzda might not have a job if he did not sign the petition. This threat, while not adding to the violation or the remedy, does highlight the violation and make it more manifest.

10 c. Complaint Cases 4–CA–31660 and 31779, paragraph 7(c), alleges that on or about October 4 or 5, the Respondent, by Richard Johnson, violated Section 8(a)(1) of the Act by telling an employee outside the Fort Washington plant, that the Union will never get back in here again. On the second day of the strike, Richard Johnson, night shift supervisor at the Fort
15 Washington plant, spoke to Shubert while Shubert was on the picket line. Johnson told Shubert that Derrah Sr. said, "The Union ain't never getting back in."

Employers who threaten the futility of union activity violate Section 8(a)(1) of the Act. E.g., *K-Mart Corp.*, 336 NLRB 455 (2001). Johnson's statement was a threat that, without
20 regard to whether the employees of the Respondent wanted a union, Derrah Sr., the owner of the company, would not recognize the union. Such a statement unlawfully conveys to employees the futility of selecting, or in this case retaining, a union. *Wellstream Corp.*, 313 NLRB 698, 706 (1994); *Ideal Elevator Corp.*, 295 NLRB 347, 351 (1989); *Soltech, Inc.*, 306 NLRB 269, 272 (1992). The Respondent presented no evidence to refute Johnson's statement
25 and the credible evidence shows that he did make this statement.

The Respondent contends that Johnson's statement constitutes speech protected by Section 8(c) of the Act. Other than referring to Section 8(c), the Respondent cites no authority for this proposition. An employer's statement that a union would never get in a company is a
30 threat that is not protected by Section 8(c). See *NLRB v. Gissel Packing Co.*, supra at 618. The economic dependence of the employee on his employer is also a factor in evaluating this threat. Id. at 617. It is well settled that such a threat violates Section 8(a)(1), and is not within the protection of Section 8(c). See *Wellstream Corp.*, supra; *Ideal Elevator Corp.*, supra; *Soltech, Inc.*, supra. The Respondent's contention is rejected.

35 Accordingly, the Respondent violated Section 8(a)(1) of the Act when supervisor Johnson told employee Shubert that the owner of the company would never allow the Union back into the company.

40 d. Complaint Cases 4–CA–31660 and 31779, paragraph 7(d), alleges that the Respondent, by Denise Waller, told an employee that the employee would have some paperwork to sign when the employee reported for work, which paperwork was a petition stating that the employees no longer wished to be represented by the Union.

45 It has already been determined, in considering the charge alleged in paragraph 7(a), that the statement of Dominic Savoca, Steven Derrah, and Derrah Jr. to Hunt that there would be paperwork to sign when he returned to the Fort Washington plant, violated Section 8(a)(1) of the Act because it unlawfully suggested to Hunt that he was expected to sign a union renunciation petition. For the same reasons, Waller's telephone call to Hunt, and her instruction that he come
50 to the plant early in order to sign paperwork, violates Section 8(a)(1) of the Act.

For the foregoing reasons, and the reasons set forth above in analyzing the allegations

in paragraph 7(a) of the complaint, the Respondent violated Section 8(a)(1) when Waller, its agent, instructed Hunt to come to the plant to sign a petition, which was a union renunciation petition.

5 e. Complaint Cases 4–CA–31660 and 31779, paragraph 7(e), alleges that the Respondent, by Dominic Savoca, gave an employee two petitions that stated the employees no longer wished to be represented by the Union, and directed the employee to obtain the signatures of employees on the petitions, and to return the signed petitions to the Respondent.

10 On October 7 and during his night shift hours, Hunt was called to his supervisor's office. Dominic Savoca, Richard Johnson, Robert Taunt, and Daniel Kenney were in the office. Savoca told Hunt to take both of the petitions or union renunciation papers and make sure that every employee who signed the first one also signed the second one. Derrah Jr. prepared the second petition after he conferred with the Respondent's attorney and in order, as Derrah Jr. testified, to
15 make the petition more legal. Hunt did as he was told. He determined that one or two employees who had signed the first petition had not signed the second petition. He then secured the signatures of these employees on the second petition. He put the signed petitions on Savoca's desk.

20 The Respondent's initiation and preparation of the second petition takes its unlawful actions regarding the first petition to another level. Its actions in both petitions are illegal, but the illegality regarding the second petition is more manifest and stark. The Respondent violated 8(a)(1) by its solicitation of signatures of the first petition. It also violated Section 8(a)(1) when it solicited signatures for the second union decertification petition that one of its owners had
25 initiated and prepared. *James Heavy Equipment Specialists*, 327 NLRB 910 (1999).

4. Complaint Cases 4–CA–31660 and 31779, paragraphs 8 and 12, (Violations of Section 8(a)(1))

30 Prior to the start of the hearing, the General Counsel filed a proposed amendment to renumber the original paragraph 8 as 8(a) and to add subparagraph 8(b) to the consolidated complaint. This amendment was permitted. Subparagraph 8(b) alleges that in June and in August/September 2003, the Respondent violated Section 8(a)(1) by asking employees to provide copies of their Board affidavits. This new allegation is closely related to and arises from
35 the same sequence of events as the charge in complaint case 4–CA–32304, which is consolidated with the other two complaints herein, that in or about June 2003, the Respondent had promised a pay raise to an employee if the employee testified favorably to the Respondent. The Respondent had ample opportunity to defend against this charge, and it did so by (1) presenting testimony that admitted the substance of this charge, and (2) arguing that its
40 requests to the employees did not violate Section 8(a)(1). Amendments that are closely related to existing charges, or that arise from the same general sequence of events, are permitted. *Nabors Alaska Drilling, Inc.*, 325 NLRB 574, 583 (1998). Such amendments relate back to the filing of the original charge and are not barred by Section 10(b) of the Act if they allege matters that occurred within 6 months of the filing of the initial charge. *Redd-I, Inc.*, 290 NLRB 1115,
45 1115–1116 (1988). All of the amendments to paragraph 8 allege conduct occurring with six months of the initial charge in this case. Accordingly, the amendment to add subparagraph 8(b) was properly allowed, and, upon reconsideration, is confirmed. Moreover, the Respondent had a timely opportunity and ability to defend against the charge.

50 Prior to the close of the hearing, the General Counsel offered a second amendment to the consolidated complaint in order to amend subparagraph 8(a) and to add subparagraphs 8(c) through 8(g). This amendment alleged matters that were closely connected to the existing

charges, the allegations arise from the same sequence of events that are in the existing charges, and the allegations allege violations of the same section of the Act. See *Pioneer Hotel & Gambling Hall*, 324 NLRB 918 fn.1 (1997), *enfd.* in pertinent part 182 F.3d 939 (DC Cir. 1999). Also, the amendment conforms the charges to the evidence that was brought out at the hearing, both from the General Counsel's and the Respondent's witnesses. I conclude that the amendment to subparagraphs 8(a) and 8(c) through (g) was properly granted, and, upon reconsideration, that ruling is confirmed. Moreover, the Respondent had a timely opportunity and ability to defend against the amendment, which was based, in part, on the testimony of the Respondent's witnesses.

The Respondent also alleges that it is prejudiced by the admission of these amendments. However, the Respondent has failed to allege or show how it was unfairly prejudiced. For all of the foregoing reasons, the Respondent's objection to the amendments is denied.

a. Complaint Cases 4-CA-31660 and 31779, paragraph 8(a), alleges that the Respondent, by Phil Savoca, told employees on the picket line that they "should consider dropping the Union because they would put the company out of business."

Phil Savoca made this statement on the first or second day of the strike to employee Albert Daniels while Daniels was on the picket line. The General Counsel contends that the statement violated Section 8(a)(1) because it conditioned the employees' return to work on dropping the Union. This contention is rejected because it does not appear that Savoca, in this statement, made "dropping the union" a condition of returning to work. On the other hand, Savoca did give a reason for his suggestion that the employees should drop the Union, a reason that makes the statement an unlawful threat, viz., that the Union's demands would put the company out of business.

When an employer makes a prediction of the effect unionization has or will have on the company, the prediction "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . ." *NLRB v. Gissel Packing Co.*, *supra* at 618. Phil Savoca's statement to Daniels did not disclose any objective facts, let alone such facts that would demonstrate probable consequences beyond the Respondent's control. Accordingly, the statement is an unlawful threat that the Respondent would close the company because of the Union, and violates Section 8(a)(1) of the Act. *Id.*; *Debber Electric*, 313 NLRB 1094 (1994).

b. Complaint Cases 4-CA-31660 and 31779, paragraph 8(b), alleges that in or about June 2003 on five separate occasions, and in August or September 2003 on one occasion, the Respondent, by its attorney and by Phil Savoca and Steven Derrah, asked employees to provide the Respondent with a copy of the affidavits the employees gave to the Board in its investigation of Cases 4-CA-31660, 4-CA-31779, and 4-CA-32304.

Shortly before July 1, 2003, the Respondent's attorney interviewed Albert Daniels. After giving Daniels proper warnings, the Respondent's attorney asked Daniels to provide him with a copy of the affidavit Daniels had given to the Board's investigator. Daniels refused. About one week later, Phil Savoca asked Daniels for a copy of his affidavit, but without providing him with any warnings. See *Johnnie's Poultry Co.*, 146 NLRB 770 (1964). Savoca continued to press Daniels for his affidavit and asked Daniels approximately four or five more times to provide a copy of his affidavit. Daniels refused each time, the last time occurring in late August 2003, about two weeks before the hearing in this case. On each occasion, Savoca failed to give Daniels any warnings.

In late August 2003, Steven Derrah asked Klatcher if he would give a copy of the affidavit he signed in the Board's investigation of the charges in this case to the Respondent's attorneys. Derrah assured Klatcher that he did not have to turn over his affidavit. Nevertheless,
 5 Klatcher agreed and gave Derrah his affidavit the next day.

Except for limited circumstances not applicable hereto, "the Board has generally found coercive, and outside the ambit of privilege, interrogation concerning statements or affidavits given to a Board agent. For such questions have a pronounced inhibitory effect upon the
 10 exercise by employees of their Section 7 rights, which includes protection in seeking vindication of those rights free from interference, restraint, and coercion by their employer." *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964) (citations omitted). "Moreover, the statements divulge the union sympathies and activities of other employees and the conduct of the supervisors toward the Union and its adherents. As such, they should be as free of any inquisitive interest
 15 by the Employer as are the employees' union activities themselves." *Winn-Dixie Stores*, 143 NLRB 848, 849 (1963), enf. 341 F.2d 750 (6th Cir. 1965), cert. denied 382 U.S. 830 (1965). Moreover, for situations other than an employer's questions about Board affidavits, the Board in *Johnnie's Poultry* set forth warnings that an employer is required to give to an employee before questioning the employee about the subject of a pending complaint.

20 The Respondent violated Section 8(a)(1) by asking Klatcher, and several times asking Daniels, to provide copies of their affidavits. These unlawful and coercive interrogations were exacerbated by the Respondent's failure to give the *Johnnie's Poultry* warnings when it made these requests.

25 c. Complaint Cases 4-CA-31660 and 31779, paragraph 8(c), alleges that during the week of October 1, 2002, the Respondent, by Phil Savoca, told employees on the picket line that they "could go across the line if they wanted to go, but they would have to denounce the Union." As noted above, Phil Savoca made this statement to Harry Schemaitat and other
 30 picketers while these workers were on the picket line at the Montgomeryville plant during the first week of October.

To condition a worker's right to work on the worker renouncing the union unlawfully interferes with the worker's Section 7 rights to form, join, or assist labor organizations.
 35 Accordingly, the Respondent violated Section 8(a)(1) of the Act by imposing this condition on its workers. *Pratt Towers, Inc.*, supra.

40 d. Complaint Cases 4-CA-31660 and 31779, paragraph 8(d), alleges that on or about October 7, the Respondent, by Phil Savoca, told employees that their option, other than walking the picket line, was to sign the paper to come back to work. As noted above, Savoca made this statement to Harry Schemaitat when Schemaitat was picketing. Also, as noted above with respect to the statements by Steven Derrah and Dominic Savoca to Olson and Taubenkraut, to condition a worker's right to work on the worker signing a decertification petition or a union renunciation petition constitutes unlawful assistance to the petition, and unlawfully interferes
 45 with the worker's Section 7 rights. Such a condition violates Section 8(a)(1) of the Act. *Eddyleon Chocolate Co.*, supra; see *Pratt Towers, Inc.*, supra.

e. Complaint Cases 4-CA-31660 and 31779, paragraph 8(e), alleges that on or about October 7, the Respondent, by Phil Savoca, provided an employee with a management-created
 50 petition denouncing the Union and directed him to have it signed by employees. (In fact, the petition does not really denounce the Union. Instead, it renounces the Union.)

Phil Savoca handed the second petition, that is, the petition created by the Respondent after consultation with legal counsel, to employee Kempf and asked Kempf to get the employees who had signed the first petition to sign the second petition. Kempf then did so. As management's agent in this endeavor, Kempf partially delegated his responsibility to Daniels in order to obtain additional signatures.

An employer violates Section 8(a)(1) when it prepares and distributes a petition renouncing the union, and it violates Section 8(a)(1) when it solicits signatures for such a petition. *James Heavy Equipment Specialists*, 327 NLRB 910 (1999). The Respondent violated Section 8(a)(1) when Phil Savoca distributed and solicited signatures for the antiunion petition drafted by the Respondent.

f. and g. Complaint Cases 4–CA–31660 and 31779, paragraphs 8(f) and (g), allege that on or about October 7, the Respondent, by Derrah Jr., created a petition denouncing the Union for employees to sign; and by Dominic Savoca, initiated two petitions rejecting the Union as the employees' collective bargaining representative, and caused the petitions to be circulated among the employees.

Derrah Jr. composed the second petition renouncing the union after he received the first petition, signed by the employees, from Dominic Savoca, and after he had consulted with corporate counsel. Derrah Jr. handed the second petition to Dominic Savoca and asked him to get the employees to sign it. Savoca relayed these instructions to Hysek. The Respondent's initiation of the second petition, its circulation of both petitions, and its solicitation of signatures for both petitions, are actions that render unlawful assistance and encouragement to these petitions. Accordingly, by taking these actions, the Respondent violated Section 8(a)(1).

The Respondent contends that its actions as alleged in paragraphs 8(e) through 8(g) constituted "ministerial aid," which does not violate the Act, citing *Bridgestone-Firestone, Inc.*, 335 NLRB 941 (2001). In *Bridgestone-Firestone, Inc.*, employee DelBusse told his manager that he wanted to avoid membership in, and representation by, the existing union. There was no evidence that the company induced or influenced DelBusse's opposition to the union or his desire to get out of the union. Moreover, the company had not committed unfair labor practices preliminary to, or which influenced, the employee's desire to avoid representation by the union. The company's assistant district manager met with DelBusse and told him to put his request in writing. When DelBusse asked what he should write, the manager gave him a copy of an employee petition from another store, from which DelBusse wrote "We the undersigned no longer wish to be represented by [the Union] for the purpose of collective bargaining." The manager instructed DelBusse to address the petition to the Company's district manager. The petition was then posted on a work bulletin board and was signed by another employee. The Board affirmed the administrative law judge in holding that the Company provided only lawful, ministerial aid to the employee.

The facts of *Bridgestone-Firestone* are readily distinguishable from the facts in the present case. In the present case, the company initiated, distributed, and solicited the signatures for both antiunion petitions in its Fort Washington plant. No employee had come to management to request such a petition nor did any employee request help in drafting such a petition, such as occurred in *Bridgestone-Firestone*. The antiunion petitions in the present case at the Fort Washington plant, and at least the second such petition at the Montgomeryville plant, were management's idea from start to finish, both in conception and in execution.

In the Montgomeryville plant, an employee initiated the first petition and management initiated the second petition. However, the first petition was not initiated until after the

Respondent told employees on the picket line that if they crossed the picket line they would have to renounce the union. This unlawful, coercive condition violated the employees' Section 7 rights, and constituted a violation of Section 8(a)(1). Thus, the idea of renouncing the Union started with management in both plants. Moreover, the first petition was not initiated in the Montgomeryville plant until after the Respondent's owner had communicated his condition that returning workers would have to renounce the Union as a condition of being allowed to return to work without loss of benefits. Thus, the first petition at the Montgomeryville plant, although formally initiated by the employees, was tainted by, was encouraged by, and was the result of the unlawful acts of the Respondent in conditioning the return of the workers on their renunciation of the Union.

In *Bridgestone-Firestone*, by contrast, the idea of renouncing the union started with the employee. Management provided this employee with a petition used in another store as a guide for his own petition, but only in response to the employee's question of what he should write. This assistance, in response to, but not beyond, specific requests from the employee, is substantially different from the actions of the Respondent herein. Indeed, no employee of the Respondent herein asked it for assistance in, or asked it any questions about, renouncing the Union. Moreover, in the Fort Washington plant, where the majority of the signatures on the antiunion petitions were obtained, the Respondent, not any employee, initiated, distributed, sponsored, and solicited signatures for both petitions. In short, the holding of the Board in *Bridgestone-Firestone* is inapplicable to the facts in the present case.

5. Complaint Cases 4–CA–32304, paragraphs 5 and 6,
(Violation of Section 8(a)(1)).

a. Paragraph 5(a) alleges that in or about June 2003, the Respondent, through Steven Derrah, created the impression of surveillance of its employees' Union activities by telling an employee that Respondent knew who did and did not support the Union.

When an employer creates the impression among its employees that their union activities are being watched or spied on, employees' future union activities and the exercise of their Section 7 rights tend to be inhibited. Accordingly, the creation of the impression of surveillance of union or organizing activities is a violation of Section 8(a)(1) of the Act. *Link Mfg. Co.*, 281 NLRB 294 (1986), *enfd. mem.* 840 F.2d 17 (6th Cir. 1988), *cert. denied* 488 U.S. 854 (1988). The test in determining whether a respondent has created an impression of surveillance is whether the employees would reasonably assume from the statement in question that their union activities had been placed under surveillance. *Schrementi Bros., Inc.*, 179 NLRB 853 (1969). The Board does not require that the words used by the employer reveal that it acquired its knowledge by unlawful means. *United Charter Service*, 306 NLRB 150 (1992).

The present case was originally set for hearing on July 1, 2003. In the beginning of June 2003, Junior Castillo talked to his supervisor, Daniel Kenney, about the possibility of receiving a raise. At the end of June 2003, and shortly before the first scheduled start of the hearing in this case, Steven Derrah met with Junior Castillo in Derrah's office, and told Castillo that he wanted to speak about the situation with the Union because he was getting ready for the hearing. Derrah assured Castillo that he would not be penalized if he chose not to speak with Derrah. Castillo agreed to talk.

Derrah asked Castillo whether anyone from management had told Castillo to sign the paper renouncing the Union. Castillo told him, "no," which was literally, but not substantially, true. Derrah asked Castillo the same question about five times, but in different ways, and on each occasion, Castillo responded, "no." Derrah addressed Castillo's pay, and told Castillo that

if he worked overtime and worked hard, Derrah would take care of him. Derrah finished the meeting by telling Castillo that he knew the workers who want the Union and the workers who do not.

5 Derrah's statement to Castillo, concerning his knowledge about the employees who did and did not support the Union, was a statement from which Castillo would reasonably assume that his and the other employees' union activities had been placed under surveillance. Even if surveillance is not the only way Derrah could have received this information, surveillance is, at least, a reasonable assumption from the statement. Accordingly, the Respondent violated
10 Section 8(a)(1) of the Act by creating the impression that its employees' union activities had been placed under surveillance.

15 b. Paragraph 5(b) alleges that, in the foregoing meeting between Junior Castillo and Steven Derrah, Derrah promised Castillo a pay raise if Castillo repudiated the Union and testified favorably to the Respondent in the unfair labor practice hearing.

20 Derrah's meeting with Castillo occurred shortly before the first scheduled start of the hearing in this case. Derrah started the discussion by stating that he was preparing for the hearing. The meeting occurred in Derrah's office, and Castillo had no coworker or representative to assist him. Derrah controlled the topics of the discussion, starting with an issue at the hearing—whether anyone from management told him to sign the antiunion petition—and proceeding immediately to a discussion about Castillo's pay and the possibility of Castillo receiving a raise.

25 On the other hand, Castillo told Derrah that no one from management had told him to sign the antiunion petition. Even though Derrah continued to ask Castillo the same question, Castillo repeated his answer, which presumably was the answer Derrah was looking for. Thus, Castillo gave Derrah the answer Derrah sought without and before allegedly being offered anything in return. Moreover, after Derrah discussed Castillo's salary and possible raise, he did
30 not return to the hearing issue topic, thus further attenuating any possible link between the two. In addition, an increase in pay is a subject that was first raised by Castillo in early June.

35 The evidence to support this allegation is substantial and the question is a close one. Nevertheless, I conclude, on balance, that the evidence is not sufficient to carry the General Counsel's burden of proof. The meeting between Derrah and Castillo was conducted under coercive and suggestive circumstances. However, Castillo gave Derrah the favorable answer that Derrah was presumably looking for before any discussion about Castillo's pay. Derrah certainly should not have expanded the discussion to include the subject of Castillo's pay, especially immediately after discussing an important hearing issue. However, it can hardly be
40 said that Derrah was seeking to change Castillo's testimony. At worst, he was trying to solidify the testimony, but this is merely speculation. *But cf. NLRB v. Maxwell*, 637 F.2d 698, 702 (9th Cir. 1981) ("The possibility that an employer's request [to see the employee's affidavit] will have a coercive effect on testimony is even present when the employee's statement is favorable to the employer for 'those known to have already given favorable statements are then subject to
45 pressure to give even more favorable testimony.'" (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 240 (1978))). Although the question is close, I conclude, on balance, that the General Counsel has failed to sustain its burden of proof with respect to the allegation in this subparagraph, and the allegation should be dismissed.

50 6. Complaint Cases 4–CA–31660 and 31779, paragraphs 9 and 14
(Violation of Section 8(a)(1) and (3)).

Complaint Cases 4–CA–31660 and 31779, paragraphs 9 and 14, allege that the Respondent violated Section 8(a)(1) and (3) of the Act by discriminating against Mower, Shubert, Dangelmaier, and Miller because of their Union membership and activities. The General Counsel contends that the Respondent's action against Mower, Shubert, Dangelmaier, and Miller should be analyzed under Section 8(a)(3) because the Respondent's reason for discharging these workers was a pretext to mask its true, antiunion animus, and that the Respondent's action is simply a "garden-variety" antiunion discrimination case prohibited by Section 8(a)(3). Nevertheless, because the Respondent alleges, although not without contradiction from its own witnesses, that it refused to allow these workers to return to work because they engaged in strike misconduct, the legality of the Respondent's action will first be analyzed pursuant to *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).

In *Burnup & Sims*, the Supreme Court held that Section 8(a)(1) is violated when an employee is discharged for misconduct arising out of protected activity, without regard to the employer's motivation or good faith, if it is shown that the misconduct never occurred. The elements of this violation are that (1) the employee was at the time engaged in a protected activity, (2) the employer knew that it was such, (3) the basis of the discharge was an alleged act of misconduct in the course of that activity, and (4) the employee was not, in fact, guilty of that misconduct. *Id.* at 23.

There is no dispute that Mower et al. were engaged in protected activity when the alleged misconduct occurred, and certainly the Respondent knew they were so engaged. Therefore, the only issue is whether the workers were, in fact, guilty of such misconduct. As set forth in greater detail above, I have credited the testimony of Mower, Shubert, Dangelmaier, and Miller, who were credible witnesses and whose testimony was credible, regarding their conduct while on the picket line. Moreover, the videotape taken by Derrah Jr. confirms the testimony of these workers that they did not engage in misconduct while on the picket line. This videotape, which captures all of the alleged picket line misconduct, fails to show any misconduct by these workers. Accordingly, the Respondent's discharge of Mower, Shubert, Dangelmaier, and Miller, even though that discharge lasted but one day, violated Section 8(a)(1) of the Act.

The General Counsel maintains that the Respondent's discharge of Mower et al. violated Section 8(a)(3) of the Act. In view of the remedy provided herein pursuant to the foregoing conclusion that the Respondent's action violated Section 8(a)(1), it is not necessary to determine whether the Respondent's action also violated Section 8(a)(3) of the Act. *United States Postal Service*, 250 NLRB 4, 6 (1980). Nevertheless, because the General Counsel and the Respondent have argued the legality of the discharges under Section 8(a)(3), I will address whether that section of the Act was also violated by the Respondent's actions.

Discharges allegedly in violation of Section 8(a)(3) and because of strike misconduct are not addressed under *Wright Line*, 251 NLRB 1083 (1980, enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), but rather in accordance with *Rubin Bros. Footwear*, 99 NLRB 610 (1952), enf. denied on other grounds 203 F.2d 486 (5th Cir. 1953). *Jackson Corp.*, 340 NLRB No. 71 (2003). Under *Rubin Bros.*, the General Counsel establishes its prima facie case by proving (1) the employee had been a striker, and (2) the employer refused to reinstate the striker because of strike misconduct. The burden then shifts to the Respondent to prove that it had an honest belief that the employee was guilty of strike misconduct of a serious nature. If the employer satisfies this burden, the General Counsel must then prove that the employee did not engage in such misconduct. See, e.g., *Pratt Towers*, supra.

Putting aside the questions of whether the alleged strike misconduct was serious and

whether the Respondent had a good faith belief that Mower et al. engaged in such serious strike misconduct, the evidence shows that the discharged workers were strikers, they were discharged because of strike misconduct (at least under one of the Respondent's shifting explanations), and they did not engage in strike misconduct. Accordingly, the Respondent's discharge of these workers, for what turned out to be 1 day, also violated Section 8(a)(3).

Alternatively, the General Counsel contends, pursuant to the analysis of *Wright Line*, supra, that the one-day discharge of Mower et al. violated Section 8(a)(3) because the action was discriminatory and was motivated by antiunion animus. (Of course, because of the Respondent's shifting explanations, the asserted basis or bases for the discharges is the elusive element here, and is the cause for the alternative analyses herein.) Because the General Counsel has focused its argument on a *Wright Line* analysis, and because of the Respondent's alternative and shifting explanations for the discharges, I will address this issue.

The Respondent argues that it had a good faith belief that these workers had engaged in picket line misconduct, and therefore, that its action was lawful. Of course, even if the Respondent had a good faith belief that these workers were guilty of picket line misconduct, the question would still remain, was the Respondent motivated by that good faith belief or by its antiunion animus. Thus, it is not enough that the Respondent could have taken its action against the employees or that it otherwise had a legitimate reason for the action. Rather, the Respondent must prove that it would have taken the same action in the absence of the protected activity. *Roure Bertrand Dupont*, 271 NLRB 443 (1984). However, because the Respondent failed to prove, in the first instance, that it had a good faith belief that these workers had engaged in picket line misconduct, it is not necessary to analyze possible competing or alternate motivations. The credible evidence in this case shows that the Respondent had but one motivation in taking its action against these workers, viz., their support for the Union.

Antiunion motivation may be established directly and, as is often the case, may be established indirectly. All of the circumstances in the case should be considered in making a determination of motive. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991). Among the individual factors that the Board has found to support an inference of animus are (1) the abruptness of the termination; (2) disparate treatment of similarly situated workers; (3) the unexplained failure to produce critical evidence or testimony which would be supportive of the employer's claims; (4) shifting or inconsistent explanations; (5) the commission of Section 8(a)(1) violations; and (6) the Respondent's assertion of pretextual reasons for its action. See, e.g., *Medic One, Inc.*, 331 NLRB 464, 475 (2000); *Lampi LLC*, 327 NLRB 222 (1998); *Montgomery Ward & Co.*, 316 NLRB 1248 (1995), enfd. mem. 97 F.3d 1448 (4th Cir. 1996).

The direct evidence of antiunion animus could not be more clear-cut. Dominic Savoca told Mower that there was a paper being circulated that returning workers had to sign, and that if Mower was not comfortable working without a union, he might not want to come back. Mower responded that he did not feel comfortable signing the union decertification petition and would not sign such a document, but he did want to come back to work. Savoca replied, "Well, that's one reason why you're not welcome back." Savoca immediately turned to Shubert and told him that he was not welcome back, and he turned to Dangelmaier and said, "Werner, you burned your bridges; you're no longer welcome here." Shubert was a union leader and supporter, and Dangelmaier was a vocal Union supporter. Similarly, Steven Derrah told Miller that Miller was welcome to come back, but if he wanted the Union, he was not welcome. Miller told Derrah that he would rather have a union, and Derrah replied, "You're not welcome then."

The indirect evidence also points inexorably to antiunion animus, although it is unnecessary to closely examine the indirect evidence. For example, the four workers were

abruptly discharged, and they were subject to disparate treatment. The Respondent failed to produce critical evidence, viz., a videotape of the strikers engaging in misconduct, evidence it represented to the state court judge that it possessed. The Respondent has offered shifting explanations for its discharge of the workers, it has committed other Section 8(a)(1) violations, and its reason(s) for the discharges is pretextual.

The testimony by and the demeanor of the Respondent's owners and managers at the hearing highlight its antiunion animus. In this regard, the testimony of Dominic Savoca is particularly instructive and disturbing. Savoca acknowledged that keeping the four workers from entering the plant on October 7 was illegal, but he would do the same thing again. "Legally I should have let them in on the 7th but I would have done the same thing because to defuse the situation." (Tr. 1140.) First, the only thing that was defused by keeping these four workers out of the plant was the chance that they would have spoken in favor of the Union as the antiunion petition was being disseminated amongst the workers. Indeed, refusing to admit these workers for this reason alone violates Section 8(a)(3) of the Act. *Sedloff Publications, Inc.*, 265 NLRB 962 (1982). Second, and more telling, Savoca's antiunion animus is not tempered or discouraged or hindered by knowledge that his actions are illegal. Savoca is not only undaunted by the illegality of his actions; he affirms he would do the same thing again knowing that his actions are illegal. He has no regret for the illegality of his actions as long as these actions assisted in ousting the Union, which they certainly did.

The Respondent also argues that an employer is entitled to a five-day grace period to reinstate striking employees who have offered to return to work, *Pinnacle Metal Products Co.*, 337 NLRB 806 (2002), and accordingly, its one-day delay in reinstating these four workers did not violate the Act. This five day grace period, whatever its other requirements, does not immunize or insulate an employer for its discriminatory actions in reinstating union supporters one day after it reinstates all other workers. Such discrimination violates the Act without regard to a five-day grace period.

For all of the reasons set forth herein, the Respondent's discharge of Mower, Shubert, Dangelmaier, and Miller for one day violated Section 8(a)(1) of the Act, and alternatively, Section 8(a)(3) and (1) of the Act.

7. Complaint Cases 4-CA-31660 and 31779, paragraphs 10 and 15, (Violation of Section 8(a)(5) and (1))

Complaint Cases 4-CA-31660 and 31779, paragraphs 10 and 15, allege that the Respondent violated Section 8(a)(5) and (1) by withdrawing its recognition of the Union as the exclusive collective bargaining representative of the employees. The Respondent formally withdrew its recognition of the Union in its letter to the Union dated October 8.

In *Levitz Furniture*, 333 NLRB 717 (2001), the Board held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." Accordingly, in the present case, where the Respondent has unilaterally withdrawn recognition from the Union, the Respondent must "prove by a preponderance of the evidence that the Union had, in fact, lost majority support at the time the employer withdrew recognition. If it fails to do so, it will not have rebutted the presumption of majority status, and the withdrawal of recognition will violate Section 8(a)(5)." *Id.* at 725. Moreover, without regard to any such loss of support, the Respondent may not withdraw recognition in the context of unremedied unfair labor practices tending to cause employees to become disaffected from the Union. *Id.* at 717 fn.1.

The General Counsel argues that the Respondent has failed to prove by objective evidence that the signatures on the antiunion petitions are the actual signatures of the named persons, that the signatures on the petitions are all bargaining unit members, and that these signatures represent a majority of the members in the bargaining unit. In this regard, the General Counsel notes that the Respondent failed to authenticate the vast majority of the signatures and failed to produce payroll records to identify the names of the persons who allegedly signed these petitions.

The Respondent counters by citing Derrah Jr.'s testimony that, on the date the petitions were signed, there were 86 bargaining unit members. However, without regard to the credibility of this testimony, there is still a question whether this testimony, as opposed to, for example, payroll records, satisfies the objective evidence requirement of proving the number of bargaining unit members, a necessary prerequisite to proving a loss of majority support. See *Levitz Furniture*, supra at 725 (although in the cited passage the Board referred to an antiunion petition as such objective evidence, the first question, a question not considered by the Board in its example, is the reliability of the petition itself; this is the matter challenged by the General Counsel who contends that the Respondent failed to prove that the petition contains the signatures of a majority of the bargaining unit employees.) The Respondent also counters by citing the employee roster admitted into evidence upon the offer of the Union. (CP Exh. 1.) However, while this exhibit may prove that the names represented by the signatures on the petitions are employees of the Respondent, it does not prove that the names are of bargaining unit members.

While the General Counsel's contention has merit, it is not necessary that it be addressed because the evidence in this case demonstrates that the petitions were signed in the context of unremedied unfair labor practices tending to cause employees to become disaffected from the Union. Moreover, I am disinclined to decide this issue on an overly technical ground while there exist such blatant unfair labor practices that show the impropriety and unreliability of these antiunion petitions, and which have resulted in the apparent expression of employee disaffection. Also, the relief sought by the General Counsel in this case, including a bargaining order, is more properly considered if the legality, credibility, and affect of these antiunion petitions are addressed on the merits. Thus, without regard to whether the Respondent proved by the required degree of objective evidence the size of the bargaining unit and the identities of members of the bargaining unit, I will address whether the signatures on the petitions were obtained in the context of unremedied unfair labor practices tending to cause employees to become disaffected from the Union. Accordingly, it is assumed herein that the signatures on the petitions are bargaining unit members, and that the bargaining unit consisted of 86 employees.

In determining whether a causal relationship exists between unfair labor practices and a union's loss of support, the Board considers several evidentiary factors, including the following: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violations to cause employee disaffection; and (4) the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984). If a causal relationship is found, the withdrawal of recognition violates Section 8(a)(5) and is unlawful.

The Respondent committed its unlawful labor practices before, during, and after the antiunion petitions were being circulated among the employees. The close temporal proximity of these events increases the likelihood of a causal relationship between them. *Jano Graphics*, 339 NLRB No. 38 (2003). The Respondent provided unlawful initiative and assistance in circulating the petitions, the very "objective" evidence on which it bases its withdrawal of

recognition. The Respondent's many unfair labor practices were part and parcel of the initiation, circulation, and execution of the petitions. This factor strongly supports finding a causal relationship between the unfair labor practices and the Union's loss of support.

5 With respect to the second factor, the nature of the Respondent's violations tends to undermine the esteem and confidence the employees' place in their union because the violations occurred during a strike which was ended only by the employees' coerced renunciation of their Union. The Respondent told the employees that they could only come back to work without loss of benefits if they rejected the Union, thus implanting in the employees' 10 minds that the Union is an impediment to their ability to work and their ability to retain their employment benefits. The Respondent's threats and promises were carried out; the employees renounced the Union, their benefits were not reduced, and the employees continue to work at both plants. In addition, the Respondent's unlawful action in discharging vocal union supporters certainly has a tendency to cause employee disaffection with the Union. "It is well settled that 15 the discharge of an active union supporter is exceptionally coercive and not likely to be forgotten. This unlawful conduct 'goes to the very heart of the Act.'" *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1068 (2001) (citation and footnote omitted.) Accordingly, the likelihood of a detrimental or lasting effect on the employees is substantial.

20 Similarly, the nature of the violations and the context in which they were committed tend to cause employee disaffection. *Penn Tank Lines, Inc.*, supra. Indeed, the Respondent's unfair labor practices were specifically directed toward causing disaffection, such as circulating antiunion petitions and telling employees that they had to sign the petition in order to work, and, further, in discharging employees who refused to sign the petition. Moreover, these violations 25 are, for the same reasons, likely to decrease morale and organizational activities by the employees. The Respondent demonstrated to the employees that it is the one that grants them benefits and employment, and that the Union impedes their attainment of these goals. For the Respondent to argue otherwise, it would have to maintain that, although it violated the law in order to break the Union, it was not successful. But such an argument cannot prevail. The 30 Respondent was "successful," and a large number of employees did renounce the Union.

The Respondent contends that, at worst, its numerous violations of Section 8(a)(1) were discreet or isolated instances of misconduct, and the evidence fails to show that all or a majority of the bargaining unit employees knew about or were influenced by these violations of law. This 35 contention is rejected. As the Board stated in *Warehouse Market, Inc.*, 216 NLRB 216, 217 (1975), "[w]e cannot discount the teaching of experience and commonsense that employees who, as here, have constant contact with each other at their place of work are not likely to refrain from discussing their employer's demonstrations of hostility to a union—especially where the employer's acts include many of so blatant a nature as those which the Respondent here 40 committed." The same teaching applies in the present case.

The coercive effect of, and disaffection caused by, the Respondent's conduct was compounded in this case by the fact that the discharged employees returned to the picket line in full view of the remaining employees who were permitted to return to work on October 7. 45 Indeed, one of the employees who was permitted to return to work told Hunt that Mower, Shubert, Dangelmaier, and Miller would not be allowed back to work. Hunt later spoke to his supervisor about what he had heard, and his supervisor said that the workers would be allowed back because "it was probably against the law." (Tr. 477.) Such rumors in the workplace confirm the Board's statement in *Warehouse Market, Inc.*, supra, and reinforce the coercive effect of the 50 Respondent's unlawful conduct. Also, as the Board recognized in *Vincent Industrial Plastics, Inc.*, 328 NLRB 300, 302 (1999), "the discipline and termination of the union steward and president, respectively, convey to employees the notion that any support for the Union may

jeopardize their employment.” Here, the discipline and termination of the union steward and three vocal union supporters would convey a similar impression. The Respondent’s violations have caused disaffection among the employees and have decreased morale and organizational activities. For all of these reasons, the Respondent’s unfair labor practices were directly responsible for the employees’ disaffection from the Union as reflected in the antiunion petitions.

The Respondent contends that the employees at the Montgomeryville plant initiated the first antiunion petition, and that this shows the Union had actually lost the support of the workers. (In Fort Washington, both petitions were initiated, distributed, sponsored, and solicited by management.) However, this first petition at Montgomeryville was not initiated until after the Respondent had told the employees, on the picket line at Montgomeryville and in general, that they would have to renounce the Union to come back to work. Moreover, the circumstances of the Montgomeryville petition are suspect. The petition stated that the employees “withdraw from [sic] the Union (Local 155) and wish to decertify ourselves from such Union.” (GC Exh. 10.) Kempf handed the signed petition to Phil Savoca, and said, “Here, everybody signed a petition. We’re coming back to work without the Union.” (Tr. 872.) This statement is certainly consistent with the proposition that the employees knew that they were required to sign the petition renouncing the Union as a condition of returning to work. Moreover, there is no evidence of any follow-up by any of the employees, including Kempf. No employee asked management if the petition was sufficient to decertify the Union, or if the petition should be filed, and if so where, or if there were other forms that had to be completed and filed, or if there was anything more that could and should be done to decertify the Union. The complete lack of any follow-up by any employee implies that the employees were not really concerned with decertifying the Union, but rather, with handing a document to management that they knew management required in order for them to return to work.

Nevertheless, if the Respondent’s contention were accepted, and disregarding for the moment that the first petition was tainted by the Respondent’s unfair labor practices, the signatures of the Montgomeryville employees on this first petition would still not demonstrate, nor satisfy the Respondent’s burden of proof under *Levitz*, that the Union had lost the support of a majority of the bargaining unit employees. The number of Montgomeryville employees who signed the first petition was 20, while the number of Fort Washington employees who signed the first petition was 34. (See Tr. 960-961; GC Exh. 10.) Assuming the bargaining unit to comprise 86 employees, as testified by Derrah Jr., the number of allegedly disaffected Montgomeryville employees clearly does not constitute a majority of the bargaining unit employees. Indeed, the number does not even represent a majority of the disaffected employees, let alone the entire bargaining unit. Accordingly, if the Respondent’s contention were accepted, and if it were assumed that the alleged disaffection of the Montgomeryville employees was not tainted by the Respondent’s unfair labor practices, the evidence would still not show that the Union had lost the support of the majority of the employees.

“It is well established that an employer cannot rely on any expression of disaffection by its employees which is attributable to its own unfair labor practices directed at undermining support for the Union.” *Wire Products Mfg. Corp.*, 326 NLRB 625, 627 (1998), *enfd.* 210 F.3d 375 (7th Cir. 2000). In the present case, the Respondent initiated the petitions (except the first petition in Montgomeryville), sponsored the petitions, solicited signatures for the petitions, and told employees that they had to sign the petitions if they wanted to keep their jobs. Moreover, the Respondent started the process by, among other things, telling the employees that the Union would never get back in the plant, and that the employees could cross the picket line and come back to work, but would have to renounce the Union.

The Respondent’s withdrawal of recognition from the Union, which was based on the

employees' signatures on the antiunion petitions, was unlawful because those petitions were tainted by the Respondent's unfair labor practices. Moreover, the Respondent has failed to prove that the union actually lost the support of the majority of the bargaining unit employees, as *Levitz* requires when an employer unilaterally withdraws recognition of an incumbent union.

Accordingly, the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from, and refusing to bargain with, the Union, the exclusive collective bargaining representative of its employees.

8. Complaint Cases 4–CA–31660 and 31779, paragraphs 11 and 13,
(Violation of Section 8(a)(2) and (1))

In determining whether an employer has violated Section 8(a)(2) and (1) of the Act, the Board utilizes a two-step inquiry.

The first step involves examining whether the committee is a 'labor organization' as defined in Section 2(5) of the Act. If not, the allegation is dismissed. If the committee meets Section 2(5)'s criteria for a labor organization, the second inquiry is whether the Respondent has dominated or interfered with the formation or administration of the committee. *Electromation, Inc.*, 309 NLRB 990 (1992),
enfd. 35 F.3d 1148 (7th Cir. 1994).

EFCO Corp., 327 NLRB 372, 375 (1998). Despite this two-step process, the only issue addressed by the Respondent in its posthearing brief is whether the shop committee, which was formed within several weeks after the workers returned to work following the strike, is a "labor organization" under Section 2(5) the Act. Notwithstanding, the General Counsel has the burden of proving, ultimately, that the Respondent violated Section 8(a)(2) by unlawfully dominating and interfering with the formation and administration of the shop committee, a labor organization. Accordingly, whether that general burden has been satisfied will also be addressed.

a. Labor organization. Under Section 8(a)(2) of the Act, it is an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." Section 2(5) of the Act defines a labor organization as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The shop committee at the Respondent was comprised of separate components for the Fort Washington and Montgomeryville plants, as well as separate components for the day and night shifts at Fort Washington. The Fort Washington, day shift, shop committee comprised Baughman and Hysek who were both appointed by management after the workers failed to submit any nominations. Hunt was elected to the night shift shop committee in an election conducted by management. Kempf and Miller comprised the shop committee in Montgomeryville. In addition, management determined and dictated to the workers the responsibilities of the shop committee, which included representing the workers in grievance or disciplinary matters, and in the creation of a guidebook of work rules. Management emphasized to the employees that the shop committee would operate just as if they still had a union. After the shop committee was created, it represented the workers in every subsequent disciplinary meeting.

A work group or association is a labor organization "if (1) employees participate, (2) the organization exists, at least in part, for the purpose of 'dealing with' employers, and (3) these

dealings concern ‘conditions of work’ or concern other statutory subjects, such as grievances, labor disputes, wages, rates of pay, or hours of employment. Further, if the organization has as a purpose the representation of employees, it meets the statutory definition of ‘employee representation committee or plan’ under Section 2(5) and will constitute a labor organization if it also meets the criteria of employee participation and dealing with conditions of work or other statutory subjects.” *Electromation, Inc.*, supra at 994. “Any group, including an employee representation committee, may meet the statutory definition of ‘labor organization’ even if it lacks a formal structure, has no elected officers, constitution or bylaws, does not meet regularly, and does not require the payment of initiation fees or dues.” *Id.*

The circumstances in which the shop committee was created should also be considered in determining whether it is a “labor organization.” See, e.g., *Electromation, Inc.*, 309 NLRB 990 (1992) (the committees that were found to constitute labor organizations were formed after a large number of employees had concertedly complained about new company policies). In the present case, the Respondent formed the shop committee concurrent with its withdrawal of recognition of the Union that had represented the employees for approximately 40 years. The Respondent sought to calm the employees by assuring them that the shop committee would take the place of the Union, and that it would be just like the workers actually had a contract. Thus, the Respondent wanted to give the shop committee the appearance of a labor organization, and it wanted the employees to consider the shop committee a labor organization.

The Respondent succeeded in creating and maintaining the shop committee as a labor organization. A member of the shop committee was present at every meeting involving possible disciplinary action against an employee. Moreover, in most, and possibly all, of these cases, management requested the committee member to be present during the meeting, which further demonstrates management’s dominance of the shop committee and its responsibilities. During the shop committee’s representation of one worker, the committee member negotiated with management and persuaded management to adopt a work rule for all employees limiting the time period within which disciplinary charges could be brought against an employee.

The shop committee in the present case is composed of employees, and it deals with labor disputes, employee discipline, grievances, and other terms and conditions of employment. The Respondent does not argue otherwise. Moreover, one of the purposes of the shop committee is to represent employees before management, and the shop committee carries out this purpose. Accordingly, the first and third elements of the *Electromation* definition have been established without factual or legal dispute from the Respondent, and are not at issue. Rather, the Respondent argues that the shop committee does not “deal with” the Respondent, and therefore, that the second element in the *Electromation* definition is not satisfied.

The definition of a labor organization under Section 2(5) of the Act is broadly construed. *St. Anthony’s Hospital*, 292 NLRB 1304 (1989); see *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959). The term “dealing with” in Section 2(5) is also broadly construed. *Prime Time Shuttle International, Inc.*, 314 NLRB 838 (1994). An organization that represents employees in disciplinary meetings is “dealing with” the employer on behalf of the employees. *Sears Roebuck & Co.*, 274 NLRB 230, 231-232 (1985), overruled on other grounds by *Epilepsy Foundation*, 331 NLRB 676 (2000), enft. denied, 268 F.3d 1095 (DC Cir. 2001), cert. denied 536 U.S. 904 (2002). As the Board stated in *Sears Roebuck*, “such functions constitute ‘dealing with’ the employer, and ‘dealing with’ an employer is a primary indicium of labor organization status as well as a traditional union function.” *Id.* at 232 (construing *Materials Research Corp.*, 262 NLRB 1010, 1016 fn. 30, 1019 fn. 40 (Van de Water, Ch., concurring and dissenting)).

With respect to the shop committee’s representation of employees in disciplinary

matters, the Respondent argues that the shop committee was simply a “de facto *Weingarten* representative for the employees” and therefore, it did not deal with the employer. (Posthearing Br. at 40.) Even if this were true, the argument proves too much because a *Weingarten* representative does “deal with” the employer within the meaning of Section 2(5). *Sears Roebuck & Co.*, supra; see *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 263 (1975). The Respondent also argues that the “dealing with” requirement has not been satisfied because the committee did not meet with management to discuss wages, hours, or other terms and conditions of employment. However, this argument confuses the terms “bargaining with” and “dealing with.” Merely because the committee did not “bargain with” the Respondent does not mean that it did not “deal with” the Respondent. The latter term, contained in Section 2(5), is not synonymous with, and is broader than, the former term, which is found in Section 8(a)(5) of the Act. *NLRB v. Cabot Carbon Co.*, supra at 211.

The Respondent also argues that the shop committee does not satisfy the “dealing with” requirement because the committee’s actions did not consist of a “pattern or practice” of dealings with management. The term “dealing with” consists of a pattern or practice of proposals and responses between management and the organization. *Polaroid Corp.*, 329 NLRB 424 (1999). Notwithstanding the Respondent’s argument, the pattern or practice requirement is met in this case because of the shop committee’s pattern and practice of participating in and representing employees in every disciplinary meeting between management and an employee. The pattern or practice requirement is also met if the group exists for a purpose of following such a pattern or practice. *E. I. du Pont & Co.*, 311 NLRB 893, 894 (1993). In the present case, the shop committee followed the practice of representing employees in every disciplinary meeting, and the committee was established in order to follow this pattern. Accordingly, the Respondent’s argument fails, and the shop committee dealt with management as required by Section 2(5).

In purporting to work with management in the creation of an employee handbook, and in representing employees in all disciplinary meetings, the shop committee dealt with the Respondent concerning grievances, labor disputes, and conditions of work. Accordingly, the shop committee, which is comprised of employees, is a “labor organization” within the meaning of Section 2(5) of the Act.

b. Interference or domination. “A labor organization that is the creation of management, whose structure and function are essentially determined by management, and whose continued existence depends on the fiat of management, is one whose formation or administration is dominated under Section 8(a)(2) of the Act.” *EFCO Corp.*, supra at 376. All of these factors need not coalesce before domination is found. Thus, where the employer established the committee and retained discretion over the committee’s continued existence, unlawful domination was found. *Webcor Packaging, Inc. v. NLRB*, 118 F.3d 1115, 1123 (6th Cir. 1996), cert. denied 118 S.Ct. 1035 (1998); *EFCO Corp.*, supra at 377 fn. 17. An employer’s unlawful domination in violation of Section 8(a)(2) does not require a finding of union animus or other unlawful motive. *Electromation, Inc.*, supra at 995 fn. 24.

The Respondent initiated the shop committee, it conducted elections to the committee, it selected the members of the Fort Washington day-shift committee, it decided and dictated the functions of the committee, and it continued to dominate the committee’s agenda and functions by summoning committee members to all disciplinary meetings. The Respondent pays the members of the committee for all time they spend on committee matters. It is some measure of the Respondent’s domination of the shop committee, although certainly not determinative of the issue, that the three employees most responsible for breaking the strike and doing the Respondent’s bidding in getting employee signatures on the antiunion petitions, viz., Kempf,

Baughman, and Hysek, were “elected” or made members of the committee by management. The shop committee has no existence or authority beyond the Respondent’s approval, and its continued existence depends on the fiat of management. Indeed, the Respondent does not argue to the contrary regarding any of the facts showing domination. Under all the
 5 circumstances, the Respondent’s domination of the shop committee is as complete as if it were management’s puppet or were a part of the Respondent’s personnel department.

For all of the foregoing reasons, the Respondent has dominated, interfered with, and unlawfully supported, and continues to dominate, interfere with, and unlawfully support, the
 10 formation and administration of the shop committee, a labor organization, in violation of Section 8(a)(2) and (1) of the Act.

Conclusions of Law

15 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

20 3. The Respondent violated Section 8(a)(1) of the Act by unlawfully initiating, soliciting signatures for, and lending more than minimal support and approval for antiunion petitions, which were then used to withdraw recognition from the Union; by unlawfully conditioning the right of striking employees to return to work on their signing antiunion petitions and renouncing the Union; by unlawfully threatening employees with the loss of their jobs if they did not sign an
 25 antiunion petition; by unlawfully threatening the futility of union activity; by unlawfully threatening the loss of jobs and the closure of the plant if the employees supported their Union; by unlawfully creating the impression that its employees’ union activities were under surveillance; by unlawfully interrogating its employees concerning affidavits they had given to the Board; and by unlawfully discharging Edward Mower, Eric Shubert, Werner Dangelmaier, and Robert Miller.

30 4. The Respondent violated Section 8(a)(1) and 8(a)(3) of the Act by unlawfully discharging Edward Mower, Eric Shubert, Werner Dangelmaier, and Robert Miller.

35 5. The Respondent violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition from the Union and refusing to bargain with the Union.

40 6. The Respondent violated Section 8(a)(2) and (1) of the Act by unlawfully dominating and interfering with the formation and administration of the shop committee, a labor organization.

7. The foregoing violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

45 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged Edward Mower, Eric Shubert, Werner Dangelmaier, and Robert Miller for 1 day, I shall order that the Respondent make them whole for any loss of earnings and other benefits, with interest.

5

The Union has represented the Respondent's employees for many years, and there is no evidence in this record of a prior history of unfair labor practices. Nevertheless, the Respondent's actions in this case demonstrate a general, if not blatant, disregard for the employees' fundamental rights. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). The Respondent's violations were pervasive, numerous, and significant, the violations infected the entire workplace, and the fairly consistent, but incredible, testimony of the Respondent's owners and managers, including their demeanor, show that animus is prevalent throughout the ownership and management structure. Dominic Savoca's complete disregard for the legality of his actions, as long as his actions helped in ousting the Union, is simply the direct and explicit animosity to employees' rights that was generally apparent from the demeanor of the Respondent's owners and managers. Moreover, the Respondent's violations continued through its preparation for the hearing in this case, until several weeks before the hearing began. Accordingly, I will recommend a broad cease and desist order.

10

15

20

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

25

The Respondent, Laneko Engineering Co., Inc., Fort Washington and Montgomeryville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

30

(a) Withdrawing recognition from, and refusing to bargain with, Machine Tool & Die Local No. 155 of the United Electrical, Radio and Machine Workers of America (the Union) as the exclusive representative of its employees in the following bargaining unit:

35

All full-time and regular part-time production and maintenance employees, including precision machining department, tool room and press department employees at the Respondent's Fort Washington and Montgomeryville, Pennsylvania plants, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

40

(b) Telling its employees that, in order to return to work from an economic strike, they must sign a petition stating that they no longer wish to be represented by the Union, or any other labor organization.

45

(c) Telling its employees that they are not welcome to return to work from an economic strike because they refuse to sign a petition stating that employees no longer wish to be represented by the Union, or any other labor organization.

50

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Conditioning the return to work of any employee from an economic strike on the employee's repudiation of the Union or any other labor organization.

5 (e) Directing its employees to abandon an economic strike and threatening the futility of union activity and the loss of jobs if they did not abandon the strike.

(f) Telling its employees that in order to abandon a strike and come back to work they would have to renounce the Union, or any other labor organization.

10 (g) Telling its employees that the alternative to walking in a picket line during a strike was to renounce the Union or sign a petition renouncing the Union, or any other labor organization.

15 (h) Threatening its employees with the loss of their jobs unless they signed a petition stating that they no longer wish to be represented by the Union, or any other labor organization.

20 (i) Threatening and telling its employees that the Union, or any other labor organization, will never get back in the plant.

(j) Initiating and preparing a petition for employees to sign stating that they no longer wish to be represented by the Union, or any other labor organization.

25 (k) Giving a petition, stating that its employees no longer wish to be represented by the Union, or any other labor organization, to one or more of its employees, or directing such employee(s) to obtain signatures on such a petition.

30 (l) Causing a petition to be circulated for employees to sign stating that they no longer wish to be represented by the Union, or any other labor organization.

(m) Soliciting the signatures of its employees on a petition stating that they no longer wish to be represented by the Union, or any other labor organization.

35 (n) Creating the impression of surveillance of its employees' Union activities.

(o) Telling employees that the Respondent will create a committee or other labor organization to deal with it concerning wages, hours, or other terms and conditions of employment.

40 (p) Appointing or selecting employees to serve on a committee or other labor organization to deal with it concerning wages, hours, or other terms and conditions of employment.

45 (q) Recognizing or bargaining with a labor organization as the collective bargaining representative of its employees in the bargaining unit described above when the Union, or any other labor organization, is the lawful bargaining representative of those employees.

50 (r) Dominating or interfering with the formation or administration of committee or any other labor organization.

(s) Recognizing or bargaining with the Shop Committee.

(t) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

5

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the bargaining unit set forth above concerning rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

10

(b) Withdraw recognition from and dismantle the Shop Committee.

15

(c) Make whole Edward Mower, Eric Shubert, Werner Dangelmaier, and Robert Miller for the discrimination against them, including the loss of any earnings and benefits, with interest.

20

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

25

(e) Within 14 days after service by the Region, post at its facilities in Fort Washington and Montgomeryville, Pennsylvania copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region Four, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 7, 2002.

30

35

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

40

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

45

Dated, Washington, D.C. [Date]

50

¹⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Joseph Gontram
Administrative Law Judge

5

APPENDIX

10

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

15

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

20

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

25

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

30

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Machine Tool & Die Local No. 155 of the United Electrical, Radio and Machine Workers of America (the Union) or any other union.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

35

WE WILL NOT recognize, and WE WILL dismantle, the Shop Committee.

40

WE WILL make Edward Mower, Eric Shubert, Werner Dangelmaier, and Robert Miller whole for any loss of earnings and other benefits, plus interest, resulting from their exclusion from work on October 7, 2002.

WE WILL NOT tell employees that in order to return to work from an economic strike they must repudiate the Union or any other labor organization.

45

WE WILL NOT tell employees that the alternative to walking in a picket line during a strike is to repudiate the Union or any other labor organization.

50

WE WILL NOT tell employees that in order to return to work from an economic strike they must sign a petition stating they no longer wish to be represented by the Union or any other labor organization.

WE WILL NOT condition the return to work of any employee from an economic strike on the

employee's repudiation of the Union or any other labor organization.

WE WILL NOT threaten employees with the loss of their jobs unless they sign a petition stating that they no longer wish to be represented by the Union or any other labor organization.

WE WILL NOT threaten employees that the Union or any other labor organization will never get back into our plant.

WE WILL NOT threaten employees regarding the futility of engaging in organizing or union activity.

WE WILL NOT initiate, encourage, circulate or in any manner solicit signatures for, a petition or paper stating that employees no longer wish to be represented by the Union or any other labor organization.

WE WILL NOT create the impression of surveillance of employees' union or organizing activities.

WE WILL NOT dominate or interfere with the formation or administration of a labor organization, such as the Shop Committee.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

Laneko Engineering Co., Inc.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404

(215) 597-7601, Hours: 8:30 a.m. to 5:00 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (215) 597-7643.